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TRANSCRIPT OF RECORD

?
Supreme Court of the United States

OCTOBER TERM, 1944

No. 36

MICHAEL F. McDONALD, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED MARCH 8, 1944.

CERTIORARI GRANTED APRIL 10, 1944.

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RELEVANT DOCKET ENTRIES.

- Nov. 7, 1941. Petition received and filed. Taxpayer notified. Fee paid.
- Nov. 7, 1941. Copy of petition served on General Counsel.
- Dec. 31, 1941. Answer filed by General Counsel.
- Dec. 31, 1941. Request for hearing in Philadelphia, Pa., calendar.
- Jan. 5, 1942. Notice issued placing proceeding on Philadelphia, Pa., calendar.
- Apr. 10, 1942. Hearing set May 18, 1942, Philadelphia, Pa.
- May 18, 1942. Hearing had before Mr. Tyson; petitioner's motion to continue, granted. Appearance of F. E. S. Morrison filed.
- May 18, 1942. Order—proceeding continued to next Philadelphia calendar—entered.
- July 25, 1942. Hearing set Sept. 14, 1942, Philadelphia, Pa.
- Sept. 17, 1942. Hearing had before Mr. Hill, on the merits. Submitted. Stipulation of facts. Appearance of John W. Bodine filed at hearing. Briefs due 11/2/42. Reply briefs due 11/17/42. Motion of petitioner to file amended petition. Granted.
- Sept. 18, 1942. Amended petition filed at Philadelphia, Pa., 9/18/42 copy served.
- Oct. 9, 1942. Answer to amended petition filed by General Counsel. 10/12/42 copy served.

Relevant Docket Entries

- Oct. 7, 1942. Transcript of hearing 9/17/42 filed at Philadelphia, Pa.
- Oct. 23, 1942. Motion for leave to file stipulation of corrections of the report of proceedings. Stipulation of corrections in the report attached, filed by taxpayer.
- Oct. 27, 1942. Brief filed by General Counsel. 12/2/42 copy served.
- Oct. 29, 1942. Motion for extension to Nov. 23, 1942, to file both briefs filed by taxpayer. 10/30/42 granted.
- Oct. 30, 1942. Motion for leave to file stipulation, etc., filed 10/23/42, granted.
- Nov. 20, 1942. Motion for extension to Dec. 3, 1942, to file simultaneous briefs and to Dec. 18, 1942, to file reply briefs filed by taxpayer. Granted.
- Dec. 2, 1942. Motion for leave to file second amended petition, ~~second amended petition~~ lodged, filed by taxpayer. 12/16/42 granted. 12/18/42 copy served on General Counsel.
- Dec. 2, 1942. Brief filed by taxpayer. 12/2/42 copy served on General Counsel.
- Dec. 29, 1942. Answer to second amended petition filed by General Counsel.
- Mar. 10, 1943. Findings of fact and opinion rendered, Hill, Judge, Div. 2. Decision will be entered for respondent. 3/10/43 copy served.
- Mar. 10, 1943. Decision entered. Kern, Judge, Div. 16.
- Apr. 5, 1943. Petition for review by U. S. Circuit Court of Appeals, 3rd Circuit, filed by taxpayer.

Relevant Docket Entries

3a

- Apr. 5, 1943. Designation of record filed by taxpayer.
- Apr. 6, 1943. Notice of filing petition for review sent to J. P. Wenchel filed.
- Apr. 7, 1943. Proof of service of filing petition for review (J. P. Wenchel) filed.
- Apr. 17, 1943. Amended designation of record filed by taxpayer with proof of service thereon.

PETITION.

(Filed November 7, 1941.)

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency SN-IT-4, dated August 9, 1941, and as a basis of his proceeding he alleges as follows:

(1)

The petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the collector for the Eastern District of Pennsylvania.

(2)

The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 9, 1941.

(3)

The taxes in controversy are income taxes for the taxable year ended December 31, 1939, and in the amount of \$2,506.77.

(4)

The determination of the tax set forth in the same notice of deficiency is based upon the following errors: (a) Disallowance of the item of \$13,017.20, claimed as the deduction from gross income and representing "reelection expenses."

(5)

The facts upon which the Petitioner relies for the basis of this proceeding are as follows:

(a) In 1939 Petitioner was a candidate to succeed himself as Judge of the Court of Common Pleas of Luzerne County, Pennsylvania.

(b) Petitioner incurred expenses of \$13,017.27 in the campaign, an itemized copy of such expenses as certified to the Secretary of the Commonwealth of Pennsylvania by petitioner is herewith attached and marked "Exhibit B".

(c) Petitioner deducted this amount from gross income as an ordinary and necessary expense.

(d) The Respondent disallowed such deduction.

WHEREFORE, the Petitioner prays that this Board may hear the proceeding and decree that such deduction was correctly made by Petitioner and should be allowed.

MICHAEL F. McDONALD,
918 Miners Bank Bldg.,
Wilkes-Barre, Pa.

COMMONWEALTH OF PENNSYLVANIA, } ss.:
COUNTY OF LUZERNE,

M. F. McDONALD, being duly sworn, doth depose and say that he is the petitioner above named, that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true to the best of his knowledge and belief.

M. F. McDONALD.

Sworn to and subscribed before me this 6th day of November, A. D. 1941.

LAWRENCE C. McHUGH,
Notary Public.

(Seal)

My commission expires: April 13, 1945.

EXHIBIT A.

SN-IT-1

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Philadelphia, Pa.

Office of
INTERNAL REVENUE AGENT IN CHARGE
Room 1100 Gimbel Building
Philadelphia Division

August 9, 1941.

Mr. Michael F. McDonald,
6 Brown Street,
Ashley, Pennsylvania.

Sir:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1939, discloses a deficiency of \$2,506.77, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing

Exhibit A

7a

the form, or on the date assessment is made, whichever is earlier.

Respectfully,

Guy T. Helvering,

Commissioner,

By G. J. Wilson

Internal Revenue Agent in Charge.

Enclosures:

Statement

Form of waiver

Form 272M

BMN/pk

Exhibit A

STATEMENT

MICHAEL F. McDONALD
6 Brown Street,
Ashley, Pennsylvania.

Tax Liability for Taxable Year Ended December 31, 1939

	Liability	Assessed	Deficiency
Income Tax	\$3,524.79	\$1,018.02	\$2,506.77

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 6, 1940, to your protest dated January 7, 1941, and to the statements made at conferences held March 6, 1941 and July 23, 1941

Adjustments to Net Income

Net income as disclosed by return	\$15,783.54
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Unallowable deductions and additional income:	
---	--

(a) Salary	\$1,000.00
------------	------------

(b) Expenses	13,017.27
--------------	-----------

(c) Contributions	7.00
-------------------	------

	14,024.27
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Net income adjusted	\$29,807.81
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Explanation of adjustments

(a) Unreported Salary received.

(b) The item of \$13,017.27, claimed as a deduction from gross income on your 1939 Federal income tax return and alleged to represent "Re-election expenses" is disallowed, for the reason that such alleged expenditure does not represent an ordinary and necessary business expense.

Exhibit A

9a

Computation of Tax

Net income adjusted	\$29,807.81
Less: Personal exemption	2,500.00
	<hr/>
Balance (surtax net income)	27,307.81
Less: Earned income credit	1,400.00
	<hr/>
Net income subject to normal tax	25,907.81
Normal tax at 4 per cent on \$25,907.81	1,036.31
Surtax on \$27,307.81	2,488.48
	<hr/>
Total tax	3,524.79
Correct income tax liability	3,524.79
Income tax assessed (Account #200879)	1,018.02
	<hr/>
Deficiency of income tax	\$2,506.77

Exhibit B

EXHIBIT B.

EXPENDITURES, DISBURSEMENTS, ETC.

Date Paid 1939	To Whom Paid or Promised Wyoming Valley Poster Advertising Co.	Amount
September 29		
September 30	Alice Logue	Advertising \$ 300.00
October 3	The Press	Clerk 25.00
October 3	The Most Precious Blood	Advertising 10.00
October 3	John Malinowski, Treasurer, Luzerne County Democratic Committee	Advertising 10.00
October 3	Wyoming Valley Poster Advertising Co.	Election expenses 4,000.00
October 9	Wilkes-Barre Post Office	Advertising 386.70
October 12	Remington Rand, Inc.	Posting Permit 10.00
October 14	Alice Logue	Typewriter rental 3.00
October 23	Robert Haines	Clerk 25.00
October 25	St. Casimer's Church	Expressage 27.23
October 27	Robert Haines	Advertising 25.00
October 27	John Malinowski, Treasurer, Luzerne County Democratic Committee	Advertising 145.23
October 30	Remington Rand, Inc.	Election expenses 3,000.00
		Typewriter rental 3.00

Exhibit B

11a

October 31	Alice Logue	Clerk	25.00
November 1	Wilkes-Barre Postmaster	Postage	300.00
November 1	Robert Haines	Advertising	175.00
November 1	John H. Bonin	Advertising	256.77
November 2	The Collins Press	Advertising	12.75
November 3	The Collins Press	Advertising	126.11
November 3	Clerk		15.00
November 6	Alice Logue	Clerk	9.35
November 6	Robert Haines	Postage	2.50
November 13	Clerks		50.00
November 22	Wilkes-Barre Record	Advertising	6.72
November 20	Drifton Fearnots	Advertising	5.00
September 13 to November 6	Travelling expenses and personal ex- penses incident thereto		369.75
		Total	\$9,323.11
April 10	Craftsmen Engravers	Advertising	2.50
April 20	Craftsmen Engravers	Advertising	4.00
May 4	Ace Hoffman	Advertising	1.00
July 10	Postmaster of Wilkes-Barre	Postage	25.00
July 20	Secretary of the Commonwealth	Filing nomination petitions	35.00
July 20	Secretary of the Commonwealth	Filing nomination petitions	35.00

Exhibit B

Date Paid 1939	To Whom Paid or Promised	Amount
July 31	The Collins Press	Printing 93.50
July 31	Leroy Reese	Printing 44.00
August 1	Marie Gray	Clerk 25.00
August 2	Dr. Frank Publiese, City Treas.	Telephone tolls 5.25
August 3	Craftsmen Engravers	Advertising 2.50
August 4	The Collins Press	Printing 77.75
August 7	Postmaster of Wilkes-Barre	Postage 20.06
August 7	Postmaster of Wilkes-Barre	Postage 100.30
August 9	Ruth Smith	Clerk 21.35
August 9	Wilkes-Barre Postmaster	Postage 50.15
August 9	Leroy F. Reese	Printing 13.00
August 10	Postmaster of Hazleton	Postage 10.03
August 10	Green Gables	Advertising 9.00
August 11	Wilkes-Barre Postmaster	Postage 20.06
August 14	Postmaster of Nanticoke	Postage 10.03
August 14	Postmaster of Plymouth	Postage 10.03
August 15	Postmaster of Wilkes-Barre	Postage 5.03
August 15	Postmaster of Nanticoke	Postage 20.06
August 17	Postmaster of Pittston	Postage 20.06
August 21	The Collins Press	Printing 87.14
August 21	Craftsmen Engravers	Advertising 35.00

Exhibit B

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August 21	Leroy F. Reese	Printing	16.85
August 23	Charles Deitrich	Advertising	30.00
August 23	Leroy F. Reese	Printing	10.50
August 23	The Collins Press	Printing	4.25
August 23	Leroy F. Reese	Printing	3.45
August 24	Postmaster of Ashley	Postage	15.03
August 24	Postmaster of Ashley	Postage	10.03
August 25	Postmaster of Kingston	Postage	35.12
August 25	The Collins Press	Printing	104.75
August 25	Pioneer Fire Dept. of Pringle	Advertising	10.00
August 26	Remington Rand, Inc.	Typewriter rental	12.00
August 28	Leroy F. Reese	Printing	12.70
August 25	Michael Wincler	Advertising	5.00
August 28	Tom Callahan, Treasurer, Political Committee		1,000.00
August 28	Hazleton Broadcasting Co.	Radio	23.40
August 30	Dr. Frank Publiese, Cty. Treas.	Telephone Tolls	.40
August 31	Alice Logue	Clerk	30.01
August 31	Leroy F. Reese	Printing	9.10
August 31	Postmaster of Freeland	Postage	20.06
September 1	The Collins Press	Printing	3.50
September 1	The Labor News	Advertising	17.50
September 2	C. H. Dietrich	Advertising	20.00

Date Paid	To Whom Paid or Promised	Amount
1939		
September 2	Lockhart Club	Advertising 10.00
September 2	Leroy E. Reese	Printing 5.35
September 2	Wilkes-Barre Independent Co.	Advertising 39.00
August 23		Clerks' hire 140.00
September 2	The Collins Press	Printing 37.00
September 2	Anthracte Tri-District News	Advertising 17.50
September 6	The Dallas Post, Inc.	Advertising 22.00
September 6	Wilkes-Barre Record	Advertising 38.00
September 6	Postmaster of Wilkes-Barre	Postage 40.12
September 6	The Pittston Gazette Co.	Advertising 6.00
September 7	Deemer & Company	Stationery 1.50
September 7	The Catholic Light	Advertising 15.00
September 7	The Collins Press	Printing 38.00
September 7	Leroy F. Reese	Printing 3.20
September 7	WBAX	Radio 15.00
September 7	Leroy F. Reese	Printing 3.70
September 11	Polish Weekly Gornik	Advertising 12.00
September 11	Bratstvo	Advertising 16.00
September 11	Leroy F. Reese	Printing 20.85
September 13	The Catholic Light	Advertising 15.00
September 13	The Leader Publishing Company	Advertising 43.92

Exhibit B

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September 13	Anthracite Tri-District News	Advertising	8.00
September 13	A. O. H. of Lackawanna County	Advertising	3.25
September 13	The Plain Speaker-Standard Sentinel	Advertising	8.00
September 15	Alice Logue	Clerk	25.00
September 15	The Greater Pittston Review	Advertising	23.75
September 14	The Collins Press	Printing	153.25
September 14	The Leader Publishing Company	Advertising	23.52
September 15	The Pittston Bulletin	Advertising	4.00
August 21	Michael Wincler	Advertising	5.00
September 15	The Collins Press	Printing	138.00
September 2	Polish Nat'l Alliance	Advertising	5.00
September 25	Robert Hughes	Advertising	5.00
September 26	The Leader Publishing Company	Advertising	5.00
August 17	John J. Keeny	Advertising	30.00
August 17	John J. McAndrew	Advertising	30.00
September 4	John J. Keeny	Advertising	30.00
September 4	John J. McAndrew	Advertising	30.00
June 24	Travelling expenses and personal expenses incident thereto		9.50
June 25	Travelling expenses and personal expenses incident thereto		9.50
June 26	Travelling expenses and personal expenses incident thereto		9.50
June 29	Travelling expenses and personal expenses incident thereto		2.50
July 2	Travelling expenses and personal expenses incident thereto		9.00

Exhibit B

Date Paid 1939	To Whom Paid or Promised	Amount
July 4	Travelling expenses and personal expenses incident thereto	9.50
July 9	Travelling expenses and personal expenses incident thereto	9.50
July 10	Travelling expenses and personal expenses incident thereto	9.50
July 12	Travelling expenses and personal expenses incident thereto	6.00
July 13	Travelling expenses and personal expenses incident thereto	3.50
July 14	Travelling expenses and personal expenses incident thereto	6.50
July 15	Travelling expenses and personal expenses incident thereto	8.50
July 16	Travelling expenses and personal expenses incident thereto	9.50
July 17	Travelling expenses and personal expenses incident thereto	9.50
July 18	Travelling expenses and personal expenses incident thereto	7.50
July 19	Travelling expenses and personal expenses incident thereto	9.50
July 20	Travelling expenses and personal expenses incident thereto	3.50
July 21	Travelling expenses and personal expenses incident thereto	9.50
July 25	Travelling expenses and personal expenses incident thereto	7.50
July 27	Travelling expenses and personal expenses incident thereto	2.50
July 28	Travelling expenses and personal expenses incident thereto	9.50
July 29	Travelling expenses and personal expenses incident thereto	9.50
July 30	Travelling expenses and personal expenses incident thereto	3.50
July 31	Travelling expenses and personal expenses incident thereto	8.50
August 1	Travelling expenses and personal expenses incident thereto	9.50
August 2	Travelling expenses and personal expenses incident thereto	9.50

August	3	Travelling expenses and personal expenses incident thereto	5.50
August	5	Travelling expenses and personal expenses incident thereto	9.50
August	6	Travelling expenses and personal expenses incident thereto	9.50
August	7	Travelling expenses and personal expenses incident thereto	5.00
August	8	Travelling expenses and personal expenses incident thereto	2.00
August	11	Travelling expenses and personal expenses incident thereto	2.50
August	12	Travelling expenses and personal expenses incident thereto	9.50
August	13	Travelling expenses and personal expenses incident thereto	9.50
August	15	Travelling expenses and personal expenses incident thereto	9.50
August	16	Travelling expenses and personal expenses incident thereto	9.50
August	17	Travelling expenses and personal expenses incident thereto	9.50
August	20	Travelling expenses and personal expenses incident thereto	7.50
August	21	Travelling expenses and personal expenses incident thereto	9.50
August	22	Travelling expenses and personal expenses incident thereto	9.50
August	23	Travelling expenses and personal expenses incident thereto	5.00
August	24	Travelling expenses and personal expenses incident thereto	9.50
August	25	Travelling expenses and personal expenses incident thereto	5.00
August	26	Travelling expenses and personal expenses incident thereto	12.50
August	27	Travelling expenses and personal expenses incident thereto	9.50
August	28	Travelling expenses and personal expenses incident thereto	9.50
August	29	Travelling expenses and personal expenses incident thereto	3.50
August	30	Travelling expenses and personal expenses incident thereto	3.50
August	31	Travelling expenses and personal expenses incident thereto	9.50

Date Paid	To Whom Paid or Promised	Amount
1939		
September 1	Travelling expenses and personal expenses incident thereto	9.50
September 2	Travelling expenses and personal expenses incident thereto	9.50
September 3	Travelling expenses and personal expenses incident thereto	9.50
September 4	Travelling expenses and personal expenses incident thereto	6.00
September 6	Travelling expenses and personal expenses incident thereto	9.50
September 7	Travelling expenses and personal expenses incident thereto	9.50
September 8	Travelling expenses and personal expenses incident thereto	8.00
September 9	Travelling expenses and personal expenses incident thereto	5.00
September 10	Travelling expenses and personal expenses incident thereto	9.50
		<hr/> \$3,694.16

ANSWER.

(Filed December 31, 1941.)

Now comes the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition in the above-entitled proceeding, admits and denies as follows:

(1) Admits that the petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania; denies the remaining allegations of paragraph (1) of the petition.

(2) Admits that the notice of deficiency was mailed to the petitioner on August 9, 1941; denies the remaining allegations of paragraph (2) of the petition.

(3) Admits that the tax in controversy is income tax for the taxable year 1939; denies the remaining allegations of paragraph (3) of the petition.

(4) Denies the allegations of paragraph (4) of the petition.

(5) (a) and (b) Denies the allegations of paragraphs (5) (a) and (b) of the petition.

(c) Admits that the petitioner deducted the amount of \$13,017.27 from gross income on his income tax return for the taxable year ended December 31, 1939; denies the remaining allegations of paragraph (5) (c) of the petition.

(5) (d) Admits that the respondent disallowed the deduction as claimed; denies the remaining allegations of paragraph (5) (d) of the petition.

Amended Petition

(6) Denies generally each and every allegation of the petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied

(Signed) J. P. WENCHEL,
*Chief Counsel, Bureau of
Internal Revenue.*

Of Counsel:

HARTFORD ALLEN,
Division Counsel,
PAUL E. WARING,
Special Attorney,
Bureau of Internal Revenue.

AMENDED PETITION.

(Filed September 18, 1942.)

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (symbols SN:IT:1, BMN:pk), dated August 9, 1941, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the collector for the Twelfth District of Pennsylvania.

2. The notice of deficiency (a copy of which is attached to the Stipulation of Facts filed in this proceeding, marked Exhibit "A") was mailed to the petitioner on August 9, 1941.

3. The taxes in controversy are income taxes for the taxable year ended December 31, 1939, in the amount of

\$2,383.02, the deficiency proposed by the respondent in his notice of deficiency aforesaid being \$2,506.77.

4. The determination of the tax set forth in the same notice of deficiency is based upon the following errors:

(a) Disallowance of the item of \$13,017.27, claimed as a deduction from gross income and representing "reelection expenses."

5. The facts in which petitioner relies as the basis of this proceeding are as follows:

(a) During 1939 petitioner was a candidate in the primary and general elections to succeed himself as judge of the Court of Common Pleas of Luzerne County.

(b) During 1939 petitioner paid out from his own funds expenses totaling \$13,017.27 in his campaigns, in the primary election to obtain the nomination, and in the general election to retain his office, as judge as aforesaid. An itemized statement of the said expenses as certified by petitioner in accordance with the Election Code of Pennsylvania is attached to the original petition and marked Exhibit "B".

(c) On his 1939 income tax return, petitioner deducted these expenses totaling \$13,017.27 from his gross income.

(d-1) Petitioner submits that these expenses totaling \$13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 in carrying on his trade or business within section 23 (a) (1) of the Internal Revenue Code.

(d-2) In the alternative, petitioner contends he sustained a loss during 1939 incurred in a transaction entered into for profit in the amount of \$13,017.27, being the expenses aforesaid, within section 23 (e) of the Internal Revenue Code.

(e) Petitioner's taxable net income for the calendar year 1939 was not greater than \$16,790.54.

WHEREFORE the petitioner prays that this Board may hear the proceeding and determine

(a) That the said expenses of \$13,017.27 constitute an allowable deduction from petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred in the taxpayer's trade or business;

(b) In the alternative, that the petitioner sustained during 1939 a loss in a transaction entered into for profit in the amount of \$13,017.27;

(c) That the petitioner's taxable net income for 1939 was not greater than \$16,790.54;

(d) That there is a deficiency in petitioner's 1939 income tax of not more than \$123.75.

(s) FREDERICK E. S. MORRISON,

(s) JOHN W. BODINE,

1429 Walnut Street,

Philadelphia, Penna.,

Counsel for Petitioner.

COMMONWEALTH OF PENNSYLVANIA, } ss.:
COUNTY OF PHILADELPHIA, }

MICHAEL F. McDONALD, being duly sworn according to law, deposes and says that he is the within named Petitioner; that he has read the foregoing Amended Petition and is familiar with the statements contained therein, and that the facts stated therein are true.

(s) M. F. McDONALD.

Sworn to and subscribed before me this 18th day of September, 1942.

(s) ALFRED JOHN MOCCIA,

(Seal)

Notary Public.

My commission expires January 27, 1945.

ANSWER TO AMENDED PETITION.

(Filed October 9, 1942.)

Now comes the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition in the above-entitled proceeding admits and denies as follows:

1. Admits the allegations of paragraph 1 of the amended petition.

2. Admits the allegations of paragraph 2 of the amended petition.

3. Admits that the tax in controversy is income tax for the taxable year 1939; admits that the deficiency proposed by the respondent is \$2,506.77; denies the remaining allegations of paragraph 3 of the amended petition.

4. (a) Denies the allegations of paragraph 4 (a) of the amended petition.

5. (a) to (e) Denies the allegations of paragraphs 5 (a) to (e), inclusive, of the amended petition.

6. Denies generally each and every allegation of the amended petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the amended petition be denied.

(Signed) J. P. WENCHEL,
*Chief Counsel, Bureau of
Internal Revenue.*

Of Counsel:

HARTFORD ALLEN,
Division Counsel,

MYRON S. WINER,
Special Attorney,

Bureau of Internal Revenue.

SECOND AMENDED PETITION.

(Filed December 2, 1942.)

The above named Petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (symbols SN:IT:1, BMN:pk), dated August 9, 1941, and as a basis of his proceeding alleges as follows:

1. The Petitioner is an individual with residence at 6 Brown Street, Ashley, Pennsylvania. The return for the period here involved was filed with the Collector for the Twelfth District of Pennsylvania.

2. The Notice of Deficiency (a copy of which is attached to the Stipulation of Facts filed in this proceeding, marked Exhibit "X") was mailed to the Petitioner on August 9, 1941.

3. The taxes in controversy are income taxes for the taxable year ended December 31, 1939, in the amount of \$2,383.02, the deficiency proposed by the Respondent in his Notice of Deficiency aforesaid being \$2,506.77.

4. The determination of the tax set forth in the same Notice of Deficiency is based upon the following errors:

(a) Disallowance of the item of \$13,017.27, claimed as a deduction from gross income and representing "reelection expenses."

5. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

(a) During 1939 Petitioner was a candidate in the Primary and General Elections to succeed himself as Judge of the Court of Common Pleas of Luzerne County.

(b) During 1939 Petitioner paid out from his own funds expenses totaling \$13,017.27 in his campaigns, in the Primary Election to obtain the nomination, and in the Gen-

eral Election to retain his office, as Judge as aforesaid. An itemized statement of the said expenses as certified by Petitioner in accordance with the Election Code of Pennsylvania is attached to the original Petition and marked Exhibit "B".

(c) On his 1939 income tax return, Petitioner deducted these expenses totaling \$13,017.27 from his gross income.

(d-1) Petitioner submits that these expenses totaling \$13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 in carrying on his trade or business within Section 23 (a) (1) of the Internal Revenue Code.

(d-2) In the alternative, Petitioner contends he sustained a loss during 1939 incurred in a transaction entered into for profit in the amount of \$13,017.27, being the expenses aforesaid, within Section 23 (e) of the Internal Revenue Code.

(d-3) In the alternative, Petitioner contends that the said expenses totaling \$13,017.27 constitute ordinary and necessary expenses paid or incurred during 1939 for the production or collection of income, within Section 23 (a) (2) of the Internal Revenue Code, as added by Section 121 (a) of the Revenue Act of 1942.

(e) Petitioner's taxable net income for the calendar year 1939 was not greater than \$16,790.54.

WHEREFORE the Petitioner prays that this Board may hear the proceeding and determine

(a) That the said expenses of \$13,017.27 constitute an allowable deduction from Petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred in the taxpayer's trade or business;

(b) In the alternative, that the Petitioner sustained during 1939 a loss in a transaction entered into for profit in the amount of \$13,017.27;

(c) In the alternative, that the said expenses of \$13,017.27 constitute an allowable deduction from Petitioner's 1939 taxable net income as ordinary and necessary expenses paid or incurred for the production or collection of income;

(d) That the Petitioner's taxable net income for 1939 was not greater than \$16,790.54; and

(e) That there is a deficiency in Petitioner's 1939 income-tax of not more than \$123.75.

(s) FREDERICK E. S. MORRISON,

(s) JOHN W. BODINE,

1429 Walnut Street,

Philadelphia, Penna.,

Counsel for Petitioner.

COMMONWEALTH OF PENNSYLVANIA, } ss.:
COUNTY OF PHILADELPHIA, }

MICHAEL F. McDONALD, being duly sworn according to law, deposes and says that he is the within named Petitioner; that he has read the foregoing Second Amended Petition and is familiar with the statements contained therein, and that the facts stated therein are true.

(s) MICHAEL F. McDONALD.

Sworn to and subscribed before me this 20th day of November, 1942.

(s) WINIFRED L. CURLEY,

(Seal)

Notary Public

My Commission expires Jan. 27, 1945.

ANSWER TO SECOND AMENDED PETITION.

(Filed December 29, 1942.)

Now comes the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the second amended petition in the above-entitled proceeding admits and denies as follows:

1. Admits the allegations of paragraph 1 of the second amended petition.

2. Admits the allegations of paragraph 2 of the second amended petition.

3. Admits that the taxes in controversy are income taxes for the taxable year 1939; denies the remaining allegations of paragraph 3 of the second amended petition.

4. (a) Denies the allegations of paragraph 4 (a) of the second amended petition.

5. (a) to (e) Denies the allegations of paragraphs 5 (a) to (e), inclusive, of the second amended petition.

6. Denies generally each and every allegation of the second amended petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the second amended petition be denied.

(Signed) J. P. WENCHEL,

B. F.

*Chief Counsel, Bureau of
Internal Revenue.*

Of Counsel:

HARTFORD ALLEN,
Division Counsel.

MYRON S. WINER,
*Special Attorney,
Bureau of Internal Revenue.*

STIPULATION OF FACTS.

(Filed at Hearing, September 17, 1942.)

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto by their respective attorneys of record that the following statements are true, provided, however, that this stipulation is without prejudice to the rights of either party to introduce further evidence not inconsistent with the facts herein stated:

1. The petitioner is an individual residing at 6 Brown Street, Ashley, Pennsylvania. The petitioner filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue for the Twelfth Collection District of Pennsylvania, on March 15, 1940. There is introduced in evidence a photostat copy of the said return. The petitioner's books were regularly kept on the cash receipts and disbursements basis and were so kept in 1939. The return aforesaid was prepared on the cash receipts and disbursements basis.

2. The petitioner paid income tax for the year 1939 to the Collector aforesaid in the amount of \$1,018.02.

3. The notice of deficiency, a true copy of which is attached hereto, marked Schedule "A" and hereby made a part hereof, was mailed by registered mail to the petitioner at 6 Brown Street, Ashley, Pennsylvania, on August 9, 1941.

4. The tax in controversy is income tax for the calendar year 1939.

5. The petitioner is now, and has been for many years, a resident of Luzerne County, Pennsylvania. He was admitted to the bar of the Court of Common Pleas of Luzerne County on August 1, 1904, and subsequently was admitted to the bars of the Supreme Court of Pennsylvania and other Pennsylvania and Federal courts.

6. On December 1, 1938, the then governor of the Commonwealth of Pennsylvania appointed the petitioner to fill an unexpired term as judge of the Court of Common Pleas of the Eleventh Judicial District of Pennsylvania. The said district is coextensive with Luzerne County.

7. Petitioner accepted the appointment aforesaid and served as judge of the Court of Common Pleas of Luzerne County from December 1, 1938, until January 1, 1940, when the term of his appointment expired.

8. During the year 1939, petitioner received the sum of \$12,000.00 as compensation for services as judge of said court, the sum of \$20,000.00 as fees for services as executor of the Estate of Mary S. Stegmaier, and the sum of \$500.12 for legal services rendered. These amounts, except for \$1,000.00 of the \$12,000.00 salary as judge, were reported as taxable income in the petitioner's return for 1939 aforesaid.

9. The term of office of judge of the Court of Common Pleas aforesaid, was to expire on January 1, 1940, and under the laws of the Commonwealth of Pennsylvania, this judgeship was to be filled at the General State Election on November 7, 1939.

10. On July 21, 1939, the petitioner filed a nominating petition with the Secretary of the Commonwealth of Pennsylvania to become a candidate for election for said office at the Primary and General Elections of 1939. The petitioner was opposed at both the Primary and General Elections.

11. At the Primary Election of Luzerne County held September 12, 1939, petitioner was nominated as the nominee of the Democratic Party for the office of judge aforesaid. At the General Election on November 7, 1939, the petitioner received 81,857 votes and his Republican opponent received 89,091 votes. Petitioner was accordingly defeated.

12. Under the laws of the Commonwealth of Pennsylvania, the term of said office of judge, aforesaid, was ten years from January 1, 1940, to January 1, 1950, and the annual salary payable to such elected candidate was \$12,000.00.

13. On August 31, 1939, the petitioner paid out from his own funds the amount of \$1,000.00 to Thomas J. Callahan, Treasurer of the Luzerne County Democratic Primary Campaign Committee, and on October 7, 1939, and October 28,

Stipulation of Facts

1939, petitioner paid out from his own funds the respective amounts of \$4,000.00 and \$3,000.00 to John Malinowski, Treasurer of the Luzerne County Democratic Committee.

14. In addition to the payments mentioned in Paragraph 13, *supra*, the petitioner paid out from his own funds (and from the \$500.00 mentioned in Paragraph 15, *infra*) during 1939 the following expenses in connection with his campaign for nomination and his campaign for election to the office as judge as aforesaid:

Filing nomination petitions	\$ 70.00
Printing and stationery	881.34
Telephone tolls	5.65
Rental of radio	38.40
Hire of clerks	389.71
Postage paid to U. S. Post Office	750.90
Rental of Typewriters	18.00
Advertising	2,040.02
Traveling expenses	823.25

Total	\$5,017.27
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Petitioner traveled on fifty-eight days in connection with his campaign for the Primary Election and on thirty-six days in connection with his campaign for the General Election.

15. During 1939 the Petitioner received the amount of \$500.00 as a contribution from his son, Michael F. McDonald, Jr., for the purpose of defraying in part petitioner's expenses aforesaid in connection with his campaign for nomination and his campaign for election to the office as judge of the Common Pleas Court of Luzerne County, as aforesaid.

FREDERICK E. S. MORRISON,
Counsel for Petitioner.
 J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

(Schedule "A" is the same as Exhibit A printed at pages 6a-9a hereof)

REPORTER'S MINUTES.

[31]* Hearing at U. S. Court House, Court Room No. 2, Philadelphia, Pa., on the 17th day of September, 1942, at 2:00 o'clock P. M.

The above-entitled matter came on for hearing on this 17th day of September, 1942, before the Honorable Samuel B. Hill, Member of the United States Board of Tax Appeals at Philadelphia, Pa., pursuant to notice of hearing heretofore given, whereupon the following proceedings were had, to-wit:

Appearances:

FREDERICK E. S. MORRISON, and JOHN W. BODINE, (1429 Walnut Street, Philadelphia, Pa.) appearing on behalf of the Petitioner.

MYRON W. WINER (Honorable J. P. WENCHEL, Chief Chief, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent.

[32] **PROCEEDINGS.**

THE MEMBER: Call the next case.

THE CLERK: Docket 109104, Michael F. McDonald.

THE MEMBER: Announce your appearances.

MR. MORRISON: Frederick E. S. Morrison and John W. Bodine, 1429 Walnut Street, Philadelphia, Pennsylvania, for Petitioner.

MR. WINER: Myron S. Winer, for Respondent.

THE MEMBER: Make a statement of the case for the Petitioner, please.

OPENING STATEMENT OF FREDERICK E. S. MORRISON, ATTORNEY FOR PETITIONER.

MR. MORRISON: If your Honor please, this, I think, is a very unique question. The issue is whether or not campaign expenses in connection with a primary and general

* Figures in brackets refer to page numbers of Transcript of Record.

county election are deductible as ordinary and necessary expenses incurred in taxpayer's trade or business.

The Petitioner, Michael F. McDonald, was a Judge of the Common Pleas Court of Luzerne County, Pennsylvania. That is a county located in the northeastern section of our state. He was appointed to office effective December 1, 1938 to fill an unexpired term ending January 1, 1940.

We propose to show that in accepting that appointment he agreed that he would run for office at the next general election for a ten-year term commencing January 1, 1940 and ending January 1, 1950.

[33] In connection with his primary campaign and the general election campaign in November he incurred expenses of some \$13,000, part of which we will show, to the extent of \$8000, represented assessments imposed by the Primary Democratic Committee and the County Democratic Committee for the election in November, and we contend that he had a right—first, we contend that his business was that of a Judge, and that to run for election to succeed himself in office such expenses incurred in connection with the election were ordinary and necessary business expenses.

We, however, are going to ask the Board to also consider, further in this case, that the House Bill, which was passed here recently, the Revenue Bill of 1942, goes a step further than heretofore in that it allows the deduction of expenses that are considered non-trade or non business expenses where they are for the production or collection of income. That Bill proposes that it shall be retroactive as to that section for all years that are open, and we trust that the Board will not decide this case before the Revenue Act of 1942 is passed.

However, we feel, irrespective of what happens to that Bill that is now pending, quite confident that these expenses incurred by Judge McDonald are ordinary and necessary expenses and should be allowed as deductions in computing the taxable income.

[34] THE MEMBER: Statement for the Respondent.

OPENING STATEMENT OF MYRON S. WINER,
ATTORNEY FOR RESPONDENT.

MR. WINER: If your Honor please, I think I should state the issue: whether the item of \$13,017.27 claimed as a deduction by petitioner from gross income on his return for the year 1939 for re-election expenses was properly disallowed for the reason that such alleged expenditure does not represent an ordinary and necessary expense incurred in connection with the carrying on of a trade or business.

It is the Respondent's contention that such expenditures are not allowable as deductions from gross income as ordinary and necessary business expenses under Section 23 (a) of the Internal Revenue Code or as losses suffered during the taxable year under Section 23 (30)—rather Section 23 (e), or as bad debts ascertained to be worthless and charged off during the taxable year under Section 23 (k) or as contributions under Section 23 (o) of the Internal Revenue Code.

The Commissioner takes the position that such expenditures are personal in nature; and, hence, are not allowable deductions from gross income.

THE MEMBER: Call your witness.

MR. MORRISON: If your Honor please, in order to make the record straight, I think it is agreed that the [35] issue in this case is whether or not these expenses made by Judge McDonald in 1939 are ordinary and necessary business expenses. However, the petition doesn't clearly set that forth, and I wish leave to file an amended petition setting forth the exact grounds on which we rely.

The other ground, in addition to ordinary and necessary expenses, is that we say that if it is not allowable under Section 23 (a) then it should be allowed as a loss incurred in a transaction entered into for profit.

They are the only two grounds on which we claim the allowance should be made, except that under the proposed House Bill, which I discussed a while ago.

Your Honor requires us to file a written amended petition?

THE MEMBER: Yes.

MR. MORRISON: Very well,
May we proceed to call the witnesses?

THE MEMBER: Any objection to the amended petition?

MR. WINER: No, your Honor, except that I should file a written denial.

THE MEMBER: You will file a written denial. How long a time do you require?

MR. MORRISON: I think we can get it in by tomorrow noon.

THE MEMBER: Very well. Have it in by tomorrow [36] noon.

Is that amended petition or amendment to the petition?

MR. MORRISON: I can make it amendments to the petition.

THE MEMBER: Whichever you wish.

MR. MORRISON: I will make it amendments to the petition.

THE MEMBER: All right. It may be filed.

MR. MORRISON: I wish to offer in evidence stipulated facts agreed upon by counsel for the Respondent and the Petitioner, and I would like to have each of the copies stamped.

MR. WINER: If I may suggest, your Honor, I think it might be helpful to you if you have that stipulation before you during the progress of this case.

THE MEMBER: All right.

MR. MORRISON: Judge McDonald, will you take the stand, please.

Whereupon MICHAEL F. McDONALD was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

[37] By MR. MORRISON:

Q. Judge McDonald, what is your occupation?

A. Attorney at law.

Q. And what was your occupation in 1939, throughout that year?

A. In 1939 I was Judge of the Court of Common Pleas of the 11th Judicial District of the Commonwealth of Pennsylvania, comprising the County of Luzerne.

Q. We have stipulated, Judge McDonald, that you were appointed Common Pleas Judge by Governor Eaker in 1938. Was there any condition attached to that appointment?

A. Yes, there was.

Q. Will you please state what that was?

MR. WINER: I object, your Honor.

THE MEMBER: Let me make this statement. I want to say that I agree with the statement of counsel for the Petitioner that this is a unique case. I am very seriously in doubt about the materiality of this testimony, but I will reserve that question.

MR. MORRISON: May I ask your Honor on what basis you don't think it is material? I think it is very material in this case.

THE MEMBER: I am admitting it. I am overruling the objection and admitting it, with reservations as to materiality. I will take that under consideration when I [38] take the case up.

MR. WINER: Your Honor, doesn't this answer involve, perhaps, a hearsay item?

THE MEMBER: What is that?

MR. WINER: Might not the answer involve a hearsay item as to what Governor Earle told him.

MR. MORRISON: I didn't say anything about what Governor Earle told him.

MR. WINER: Will you please read the question?

(The question was read.)

A. The condition was this: that I would agree to be a candidate for the full term in November, 1939.

MR. WINER: I object, your Honor, and move it be stricken from the record.

THE MEMBER: The objection is overruled, with the reservation that I made in the previous ruling.

MR. WINER: Will you note my exception, your Honor?

THE MEMBER: The exception is noted.

Q. You were a candidate to succeed yourself in the general election of 1939?

A. I was.

MR. WINER: I object, your Honor.

THE MEMBER: Overruled.

Q. What did you have to do in order to get the support [39] of the Democratic Party?

A. I was obliged to contribute the assessment of the Democratic organization of Luzerne County made by its Executive Committee.

MR. WINER: I object, your Honor.

THE MEMBER: I understand that counsel for the Respondent is objecting to this entire line of testimony.

MR. WINER: Yes, your Honor.

THE MEMBER: I will overrule the objection and admit the evidence offered. I will pass on the question of

materiality when I come to write up the case and make my decision.

Q. Were you consulted as to the amount of assessment?

A. I was not. The amount of the assessment was communicated to me later on.

MR. WINER: If I may—excuse me just a minute, your Honor. I not only object on the ground of materiality, but object on the ground that the witness is stating a conclusion.

THE MEMBER: I don't think that objection is good. It may be understood that your objection goes to this entire line of testimony. If the ruling is adverse to you, you may have an exception.

MR. WINER: Thank you, your Honor.

Q. Did you have any control over fixing the amount [40] of that assessment?

A. I did not. It was "take it or leave it."

Q. Would you have had the support of the Democratic organization if you had not agreed to that assessment?

A. I certainly would not.

Q. It is stipulated that you traveled on 94 days in 1939 in connection with your campaign for re-election. During which months of the year was that done?

A. It was done principally in the months of July, August, September and October.

MR. WINER: I object, your Honor. I think that the witness has written evidence to show the dates on which these trips were made, and I object on the grounds of best evidence.

THE MEMBER: Did he make that memorandum you are referring to?

MR. WINER: Yes, your Honor.

THE MEMBER: I will overrule it.

Q. Are the Common Pleas Court of Luzerne County, including the one over which you presided, adjourned during those months?

A. There is only one Common Pleas Court in Luzerne County. There are five individual Common Pleas Judges. In 1939, the adjournment began around June 15th and continued practically to the first Monday in October, when the Common [41] Pleas begins again. There may be some Chamber sessions, motions and so on, during the summer months, and one Judge is assigned for several weeks.

Q. But you attended to all your Judicial duties?

A. I did.

Q. When you were required to?

A. I did.

Q. Judge McDonald, in the primary and general election of 1939, was there also an election for another Judgeship in the Common Pleas Court of Luzerne County?

A. Yes. In that campaign, the County of Luzerne was to elect two Common Pleas Judges.

Q. What is that?

A. Mine was for an unexpired term of Judge McLean, who had died in the summer of 1939, and Judge Valentine, who had been on the bench for ten years, his term expired; so that there were two vacancies to be filled that year.

Q. For the term beginning January 1, 1940 for ten years?

A. That is correct.

Q. Did you practice law at all during the year 1939?

A. I did not.

Q. As an attorney?

A. I did not.

Q. It is stipulated that you were, during 1939, an executor of the Estate of Mary Stegmaier. When did you [42] become executor of her Estate?

A. I became one of the executors of her Estate, there being two others, namely, her son, George J. Stegmaier, and George W. Guckelberger, on the 8th of December, 1936.

Q. Is this a short certificate from the Register of Wills of Luzerne County?

A. Yes, sir. The will was probated on that date and letters testamentary were issued to us at that time.

MR. MORRISON: If your Honor please, I offer in evidence a short certificate issued on the 8th day of December, 1936 by the Register of Wills of Luzerne County showing the appointment of George J. Stegmaier, George W. Guckelberger and M. F. McDonald, the Petitioner, as executors of the Estate of Mary G. Stegmaier, deceased.

THE MEMBER: What is the relevancy of that?

MR. MORRISON: I want to show—rather, I will put it this way: The reason for producing that is the fact that when we tried to stipulate the facts of this case, Respondent's counsel seemed to take the position that the Petitioner was conducting other businesses besides that of Judgeship during the year 1939, and I want to show that he was executor back in 1936 and has continued to be ever since.

THE MEMBER: Is that admitted here?

MR. WINER: If your Honor please, I think in our [43] stipulation we have admitted that he received a fee of \$20,000 in 1939 in paragraph 8 for services as executor of the Estate of Mary G. Stegmaier.

MR. MORRISON: I want to show that they were for services rendered for the entire executorship period.

MR. WINER: What do you mean by that?

MR. MORRISON: Just that; from the date he was appointed. It is stipulated that he is one of the three executors of the Estate of Mary Stegmaier. I want to show the date he was appointed as executor.

THE MEMBER: He testified to it, I believe. You can have it in, if you want it.

MR. MORRISON: I would like to have it in.

MR. WINER: I have no objection.

THE MEMBER: Admitted as Petitioner's Exhibit 1.

(Document referred to marked Petitioner's Exhibit No. 1 and received in evidence.)

Q. Judge McDonald, how much time did you spend in 1939 in the performance of your duties as Executor of the Estate of Mary Stegmaier?

A. Very little time. Only, Mr. Morrison, the time that would be consumed in conferences; I think three conferences, I find from my diary, with my fellow executors, and the time that might be consumed in signing the checks for the payment of bills that were incurred that year.

[44] Q. Were not most of the duties performed by you prior to 1939?

A. That is correct.

Q. In fact, prior to December 31, 1938?

A. That is correct.

MR. WINER: I object, your Honor. The bill itself would be the best evidence.

THE MEMBER: What is that?

MR. WINER: The vouchers filed in the Orphans' Court showing the allowance of these fees, I think, would be the best evidence or proof of that, your Honor.

MR. MORRISON: If your Honor please, I wish to take exception to that because, apparently, the advisor to the Respondent's Counsel doesn't seem to know what we do in our Orphans' Court. We have no such thing as vouchers. They are simply entered on the account.

THE MEMBER: I overrule the objection. Your question is leading, though. Let the witness do the testifying, and you do the questioning in the way the rules provide.

MR. MORRISON: Very well.

Q. To the best of your knowledge, Judge McDonald, have any other Judges of your Common Pleas Court ever acted as executor of an Estate?

A. They have.

[45] MR. WINER: I object, your Honor.

THE MEMBER: That is immaterial. I will sustain the objection and strike the answer.

MR. MORRISON: I would like to have an exception, if your please.

THE MEMBER: You may have an exception.

Q. Were you also counsel for the Stegmaier Estate?

A. I was.

Q. Did you perform any duties as attorney in the year 1939?

A. I did not.

THE MEMBER: Judge, what Court has jurisdiction of probate matters?

A. In Luzerne County, there is a special Orphans' Court, if your Honor pleases.

THE MEMBER: Does the Common Pleas Court have any jurisdiction?

A. None whatever. We have a separate Orphans' Court of Luzerne County, presided over by one President Judge.

THE MEMBER: What is the appellate court for that?

A. The Superior and Supreme Courts of Pennsylvania, depending upon the size of the judgment.

Q. Judge, do you recall following any other occupation or business or profession during the year 1939?

A. I certainly did not.

[46] Q. Other than that of Judge?

A. That is correct.

Q. It is stipulated that you spent \$5017.27 in 1939 for miscellaneous expenses, radio advertising, postage, and so on in connection with your campaign to retain your office. Did you file sworn accounts of these statements within 30 days after the primary and general elections with the County Board of Elections?

A. I did.

MR. WINER: I object, your Honor. I think that those speak for themselves, too.

MR. MORRISON: No, no.

THE MEMBER: What is that?

MR. WINER: I think that those records or statements would speak for themselves.

MR. MORRISON: I asked him if he filed them. That is all I asked.

THE MEMBER: He asked him something, I take it, not in the stipulation.

Q. Judge McDonald, what is the size of Luzerne County?

A. In area, approximately about 50 miles in length north and south, and about 30 miles in width east and west. In population, it is about 450,000, and in the number of registered voters, I think about 210,000.

Q. What is the nature of that population?

[47] A. It is a very cosmopolitan population made up of every nationality under the sun.

Q. That's the principal anthracite coal section?

A. We are exactly in the center of the anthracite coal fields, coal beds.

Q. That's its principal industry?

A. That's the principal industry.

MR. WINER: I object, your Honor. He seems to be leading the witness along. I wish he would be more direct in his questions.

THE MEMBER: I don't know that I can control that.

MR. MORRISON: That is all.

MR. WINER: I offer in evidence, your Honor, the individual income tax return of the Petitioner for the calendar year 1939 as Respondent's Exhibit A. That is the year involved herein.

THE MEMBER: Is it identified?

MR. MORRISON: Is it admitted?

MR. WINER: Yes.

THE MEMBER: Admitted as Respondent's Exhibit A.

MR. WINER: With permission to substitute a photostatic copy?

THE MEMBER: You may have that permission.

(Document referred to marked Respondent's Exhibit A and received in evidence.)

[48] MR. WINER: No questions, your Honor.

THE MEMBER: That is all, Judge.

MR. MORRISON: Judge McDonald, just a second. I would like—

MR. WINER: I object, your Honor. I have not cross-examined the witness.

THE MEMBER: If he has any re-direct—

MR. WINER: He has no re-direct, your Honor.

MR. MORRISON: I do have, your Honor.

If your Honor please, this is in effect an equity proceeding, and there are just a couple of questions I would like to ask the witness, and I think I am entitled to ask them.

MR. WINER: I object, your Honor.

THE MEMBER: If he wants to open it up—

MR. MORRISON: I will recall him.

THE MEMBER: We are not going to stick to technicalities on that.

MR. WINER: Will you note my exception?

THE MEMBER: Yes.

By MR. MORRISON:

Q. We have agreed that this case involves a very important question of law that affects the whole nation.

THE MEMBER: Go ahead and ask your question.

MR. MORRISON: I would like your Honor to hear me a [49] minute.

This question, since the passage of the Public Salaries Act of 1939, is very important to the nation, with the high tax rates that are now in effect, and will be in effect much higher this coming year.

THE MEMBER: Have you any questions to ask this witness? Don't take this down. We are not going to have any argument at this stage of the game. If you have some questions to ask, direct them to the witness.

MR. MORRISON: All right.

Q. Judge McDonald, on your return for 1939, under Schedule D, Item 1, it reads as follows: "Total receipts (state nature of business or profession): Judge and attorney, \$11,500.12." Will you state for the Board the nature of that item of \$11,500.12?

MR. WINER: I object. That is covered by the stipulation.

THE MEMBER: Is it covered by the stipulation?

MR. MORRISON: It may be, your Honor.

THE MEMBER: Well, objection is sustained.

MR. MORRISON: If it is, then I will withdraw the question.

MR. WINER: Isn't that covered?

MR. MORRISON: That part is. You are right.

Q. Judge McDonald, it is stipulated that in the year [50] 1939 you received \$500.12 as attorney. When were those services performed?

A. Those services were all performed prior to December 1, 1938, the date of my appointment.

Q. When you put down on the return "judge and attorney" the idea was merely for explanation of the item, or what was its purpose?

A. As Judge I had an income that year of \$11,000, though it might have been twelve, because the last check was not cashed until after the beginning of the next fiscal year, and the \$500.16 was income that came to me as an attorney, but earned prior to December 1, 1938.

Q. Is that the reason why, on page 4 of the return, under the caption "questions," you state: "Item 1: State your principal occupation or profession," and you wrote "Judge and attorney"?

A. Well, I don't recollect that, but my principal occupation certainly in 1939 was a Judge, because a Judge is prohibited by statute from acting in any way as an attorney.

Q. Therefore, you did not act as an attorney in that year?

A. I certainly did not.

MR. MORRISON: That is all.

MR. WINER: If your Honor please, I would like to [51] state at this time that we have objected, as I understand it, to every bit of evidence, questions and answers, put in.

THE MEMBER: All right. Let the record show that your objection goes to all the testimony of this witness.

MR. WINER: Yes, your Honor.

THE MEMBER: And that you may have an exception to the ruling admitting any of it?

MR. WINER: Thank you.

MR. MORRISON: That is all, Judge McDonald.

THE MEMBER: That is all.

(Witness excused.)

MR. MORRISON: Mr. James Law!

Whereupon JAMES J. LAW was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. What is your occupation, Mr. Law?

A. Special representative of the Sinclair Refining Company.

Q. What was your occupation in 1939?

A. Special representative of the Sinclair Refining [52] Company.

Q. In that year, did you have any connection with any political organization?

A. Yes, sir.

Q. What was it?

A. Chairman of the Democratic County Committee of Luzerne County.

MR. WINER: I object, your Honor. I don't see the materiality of this.

THE MEMBER: The objection will be overruled, with reservation to the materiality.

MR. WINER: May that cover the entire testimony?

THE MEMBER: That will cover the entire testimony along that line.

Q. Have you been Chairman continuously since 1939?

A. Yes, sir.

Q. I am sorry. When did you become Chairman of the Democratic County Committee?

A. June of 1936.

Q. You have been that since?

A. I have been re-elected.

Q. Did any of the candidates for offices in Luzerne County receive the support of your Democratic organization in the primary and general election of 1939?

A. Yes, sir.

[53] MR. WINER: I object, your Honor.

THE MEMBER: It is understood you may have an objection to all of this testimony. I imagine you are going to object to all of it.

MR. WINER: Except that he does appear to be leading the witness along.

MR. MORRISON: I am not leading the witness along. I am trying to get it over with. That is just nonsense.

Q. How many candidates were supported by your Committee?

A. Eleven.

Q. Do you know the names of those candidates?

A. Offhand, I couldn't tell you all of them. Judge McDonald was at the head of the ticket. Attorney John Bonin.

Q. What was John Bonin running for?

A. He was running for Judge.

THE MEMBER: Let's not bring in any other candidate. Let's confine it to this one candidate.

MR. MORRISON: It is very important to bring in the other candidates, because the Respondent takes the position that Judge McDonald's contribution or assessment to the Primary Democratic Committee and to the General Democratic Committee were for the benefit of all candidates, and I propose to show that the other candidates contributed [54] to that same Committee for the benefit of Judge McDonald; so it is very material.

THE MEMBER: All right. All right.

MR. WINER: Same objection, your Honor.

THE MEMBER: The objection will be overruled, with the reservation laid down.

Q. Do you recall why two candidates were running for the office of Judge of the Common Pleas Court of Luzerne County?

A. There was a vacancy due to the death of Judge McLean, and the other term expired of Judge Valentine. That is the reason there were two candidates running.

Q. Can you tell us how your Committee is organized?

A. Yes, sir.

Q. Will you do that, please?

A. There are 408 precincts in the County of Luzerne, and according to the State rules of the Democratic Party, we elect two members from each precinct to the Committee, a man and a woman, and then the Committee convenes after the primaries, 60 days after the primary election, and they elect their County officers, County Chairman, County Treasurer, Secretary and Vice-Chairman. Then, there are seven legislative districts in the County of Luzerne. Each legislative district holds a convention, and they elect a chairman of the district, and the County Chairman has the power, [55] through the rules, to appoint an executive committee of 21 members. Each member in his—each chairman of the legislative district is a member of the committee, and he

appoints two members from his district which comprise 21 members, and the County Chairman is also a member of the Committee.

Q. Do you have a sub-committee, also, a sub-executive committee?

A. The Chairman has the power to appoint committees. He appoints sub-committees when it is necessary.

Q. How did your organization support these candidates by setting up these committees?

A. The County Executive Committee met.

Q. How were the expenses of the Committee met?

A. How were the expenses?

Q. Yes.

A. Through assessments of the candidates that were running for office.

Q. Do you know how the assessments were determined?

A. They were determined according to the means and the salaries that they would receive if they were elected.

MR. WINER: I object, your Honor. I object to the use of the word "assessment" unless the Petitioner can show that these were legal obligations on the part of Mr. McDonald, and any other candidate, to pay those amounts and on [56] the Party to spend them.

MR. MORRISON: I don't agree.

THE MEMBER: I am taking this evidence, reserving all questions as to materiality. I overrule the objection.

MR. WINER: There are questions not only as to materiality but conclusions.

THE MEMBER: Yes.

MR. WINER: And legal conclusions as well, your Honor.

THE MEMBER: All right. I will reserve that question, too.

MR. WINER: Thank you, your Honor.

THE MEMBER: I will overrule your objection. Go ahead.

Q. Did your Committee consult with the candidates as to the amount that they would be assessed for the campaign expenses?

A. Pardon.

Q. Did your Committee consult with the candidates as to the amounts that they would be assessed for campaign expenses?

A. There was a sub-committee picked to consult with them.

Q. If any of the candidates had not paid his entire assessment, would he have had the support of your [57] organization?

A. Would he?

Q. Yes.

A. I don't think so.

Q. Well, would he? Answer the question.

A. No.

Q. Were the receipts of the committees disbursed under your direction?

A. No, sir. They were disbursed under the direction of the Treasurer.

THE MEMBER: The Treasurer of what?

A. Of the County Committee.

Q. Do you know whether the funds—

THE MEMBER: Do you mean he determined how it should be disbursed?

A. Pardon me.

THE MEMBER: Do you mean he determined how it should be disbursed?

A. No. The Executive Committee—

THE MEMBER: He simply paid them out?

A. He paid them out.

THE MEMBER: Somebody authorized him to do it; isn't that correct?

A. That is right.

Q. Do you know whether the funds of those committees, [58] those two committees, were paid for the types of expenses which are permitted by the Election Code of Pennsylvania?

A. Yes.

MR. WINER: I object, your Honor. I think that that is a conclusion.

THE MEMBER: That is a conclusion.

MR. MORRISON: Your Honor, I have asked him whether the—first of all, the Election Code specifies the nature of these expenses that moneys may be expended for, and I have asked him: did the expenses of those committees conform to what is prescribed?

THE MEMBER: It is a conclusion, though. I will strike the answer.

Q. Did the assessments paid into your Committee, into the two committees, by the nine candidates other than Judge McDonald help his candidacy?

A. Yes, sir.

THE MEMBER: Wait a minute. Wait a minute.

MR. WINER: I object, your Honor.

THE MEMBER: Are you testifying to a fact or your opinion?

A. My own opinion.

MR. WINER: I object on the grounds—

THE MEMBER: The objection is sustained.

Q. Mr. Law, do you know whether or not Judge McDonald [59] was helped in his campaign by the funds received by the two committees?

A. In my opinion; yes.

THE MEMBER: Just a minute.

MR. WINER: I object.

Q. I am asking you whether you know it as a fact?

A. In my opinion; yes.

THE MEMBER: The answer is stricken.

Q. Not as to your opinion; do you know for a fact whether the receipts by the two committees benefited Judge McDonald's candidacy in conducting the expenses of that campaign?

A. Yes.

MR. WINER: I object.

MR. MORRISON: He said he knew it as a fact.

THE MEMBER: I think the witness has already stated that he is giving simply an opinion. It will be considered as an opinion when we come to consider this, and the competency of it is certainly not—

MR. MORRISON: I will proceed to qualify him, then.

Q. Mr. Law, did you ever run for elective office?

A. Yes, sir.

Q. Did you—

MR. WINER: I didn't hear that question.

THE MEMBER: This is not a matter for expert [50] testimony.

MR. MORRISON: I think it may be, your Honor.

THE MEMBER: I think it isn't. Any objection?

MR. WINER: Yes, your Honor.

THE MEMBER: Objection sustained.

Get your record in here. I am letting you put in a lot of stuff that has nothing to do with this case. I am letting you put it in. You can't move in everything.

MR. MORRISON: I know. If you will bear with me, you will see that it is very relevant.

THE MEMBER: I won't let it in. You go ahead and ask your questions. We have to draw the line somewhere.

MR. MORRISON: Very well, sir.

Q. Mr. Law, in how many campaigns, political campaigns have you participated in Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained.

MR. MORRISON: Your Honor, I am qualifying this man as an expert witness.

THE MEMBER: I am holding that it is not a matter for expert testimony.

MR. MORRISON: You don't know what I am going to prove by it.

THE MEMBER: I know you are not going to prove it before this forum.

[61] MR. MORRISON: What I want to do is make an offer of proof, that these are necessary and ordinary expenses in connection with his political campaign. I want to show from these witnesses, experts, that they were ordinary and necessary election campaign expenses.

MR. WINER: I object to the introduction of that.

THE MEMBER: Then, show that. You don't have to show it by expert testimony.

MR. MORRISON: I started to. You granted all these objections here, right and left.

THE MEMBER: All right. Ask your questions, and I will rule on them as you ask them.

Q. How many political campaigns have you participated in in Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained. It is immaterial.

Q. Did you ever run for office?

MR. WINER: I object, your Honor.

THE MEMBER: Objection sustained.

Q. Do you know what the expenses of the various candidates have been in these various campaigns?

A. Yes.

MR. WINER: I object to that question, too.

THE MEMBER: Objection sustained. The answer is stricken.

[62] Q. Mr. Law, what has been your experience in political campaigns?

MR. WINER: I object.

THE MEMBER: Objection sustained.

MR. MORRISON: I would like to know the ground for it, your Honor.

THE MEMBER: The ground is so obvious that it is difficult to explain it.

MR. MORRISON: It can't be very obvious if it can't be explained.

THE MEMBER: Of course, I am not responsible for your understanding it. It is obvious to me. Go ahead and ask your question.

Q. Mr. Law, you have testified that you have been County Chairman for many years of the Democratic Party of Luzerne County?

MR. WINER: I object.

MR. MORRISON: I am telling him what he has already testified to.

Q. During 1939, Judge McDonald expended—and this is stipulated—for campaign expenses, out of his own funds, \$5017.27, and in addition thereto he was assessed by the Committee a total of \$8000, which he paid over to the committees.

MR. WINER: I object to the form of the question, [63] your Honor.

MR. MORRISON: There is no question yet.

THE MEMBER: He is reading from the stipulation.

MR. WINER: There is nothing in the stipulation which shows that this was an assessment—nothing,—not a thing.

MR. MORRISON: With that qualification, that there is not in the stipulation any word of "assessment," they were amounts paid to the committees—we had testimony already that they were assessments.

THE MEMBER: There is no question about that, that they were paid in.

MR. MORRISON: There has been testimony, and not contradicted, that they were assessments.

MR. WINER: We have objected to all testimony that has gone in.

MR. MORRISON: That's all right. But, it has been admitted.

MR. WINER: It has been admitted with reservations as to it.

Q. Mr. Law, from your long experience in political campaigns as County Chairman of the Democratic Party

of Luzerne County, would you say that the total expenditures by Judge McDonald in 1939, that is, the \$13,017.27, were or were not ordinary in amount and necessary for his [64] candidacy as Judge of the Common Pleas Court of Luzerne County?

MR. WINER: I object.

THE MEMBER: Objection sustained.

Q. Would you say, Mr. Law, that it was necessary for Judge McDonald to make those disbursements as campaign expenses in order to retain his office as Judge?

A. Yes.

MR. WINER: I object.

THE MEMBER: Objection sustained. Don't answer the question until you see whether there is an objection or not.

MR. MORRISON: Your Honor, I would like the record to show that I have made an offer of proof to show that by this witness, Mr. Law here, that the disbursements made by Judge McDonald in 1939 in connection with his election campaign, both at the primary and the general election, were ordinary, necessary expenses by him in connection with seeking the re-election for a term of ten years commencing January 1, 1940 and ending December 31, 1949.

THE MEMBER: Your offer of proof—the method of proof by which you propose to make this showing is indicated by the questions asked and the rulings thereon?

MR. MORRISON: Yes.

THE MEMBER: The offer is denied.

MR. WINER: No questions, your Honor.

[65] THE MEMBER: I don't know whether he is through with the witness or not.

MR. WINER: I am sorry.

MR. MORRISON: If Your Honor please, I am making an offer of proof by this witness showing that he has been Chairman of the Democratic Committee of Luzerne County, Pennsylvania for many, many years past; that he is competent to testify as to what constitutes ordinary and necessary expenses in an election campaign by a candidate; that he is the County Chairman; that he has run for office at various times; that he is familiar with the expenses of his Committee, what the moneys are paid for; that he is familiar with the fact that under the law of Pennsylvania we have an Election Code which governs what a committee and the candidate may spend moneys for; that he knows that the Committee has filed statements as prescribed by the law of the Commonwealth showing the nature of the receipts and the disbursements by those committees, and that they conform to what is prescribed by the Election Code, and that is what I endeavored to show by this witness, that the expenditures made by Judge McDonald in connection with his two campaigns, the primary campaign in the early part of the year 1939, and the general election in November of 1939; that those expenses were ordinary and necessary expenditures by Judge McDonald in seeking re-election for his term of office as Judge.

[66] THE MEMBER: I am not taking the position that he couldn't show that he is qualified to answer the questions; that the expenditures made by Judge McDonald were necessary expenses in Judge McDonald's campaign, if he were qualified to show it, but on the basis of the questions which you have propounded to this witness, and assuming that your offer of proof will be along the same line, I will deny your offer.

MR. MORRISON: I want an exception to that ruling.

THE MEMBER: You may have an exception.

Q. Mr. Law, it has been stipulated in paragraph 14 of the stipulation that Judge McDonald expended \$5,017.27 for certain items, possibly 10, (I will show them to you in a minute) and in paragraph 13 that he paid out also from his own funds \$1000 to the Treasurer of Luzerne Democratic Primary Committee and \$7000 to the Treasurer of the Luzerne County Democratic Committee to help defray his election expenses. From your long experience in politics for the Democratic Party in Luzerne County, would you say—wait a minute. Just hold that. Will you please look at this. (Showing stipulation to witness.) Would you say that they were ordinary and necessary expenses incurred by Judge McDonald?

A. Yes.

Q. In connection with his election campaign?

[67] MR. WINER: I object.

THE MEMBER: Objection sustained.

MR. WINER: May the answer be stricken?

THE MEMBER: Yes.

MR. MORRISON: Exception.

You granted me an exception to that?

THE MEMBER: I will grant you an exception.

MR. MORRISON: I asked for it.

Cross-examine.

MR. WINER: No questions.

THE MEMBER: That is all.

(Witness excused.)

MR. MORRISON: Mr. Callahan.

Whereupon THOMAS J. CALLAHAN was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. What is your occupation, Mr. Callahan?

A. Chief Clerk of the House of Representatives of Pennsylvania.

Q. What was your occupation in 1939?

MR. WINER: I object, your Honor.

[68] THE MEMBER: You object on the ground of materiality?

MR. WINER: All the way through.

THE MEMBER: I will reserve the question of materiality and overrule your objection.

A. Real estate and insurance.

Q. Will you speak louder, please?

A. Yes, real estate and insurance.

Q. Did you in 1939 have any connection with the Democratic Organization in Luzerne County?

A. I did.

Q. What was your position?

A. I was Treasurer of the Primary Campaign Committee.

Q. Were you elected or appointed?

A. I was appointed.

Q. How long have you been a member of the Democratic Organization of Luzerne County?

A. Since 1932.

Q. Did you ever run for elective office in Luzerne County?

A. Yes.

MR. WINER: I object, your Honor.

THE MEMBER: I understand you are objecting to this entire line of testimony.

MR. WINER: Yes, your Honor.

[69] THE MEMBER: It may be so understood. You may have an exception.

MR. WINER: All right.

Q. Will you state what your duties were as Treasurer of the Democratic Primary Campaign Committee of Luzerne County?

A. To accept the funds from the different candidates and any other contributions that might come in and disburse them under orders of the candidates, written orders.

Q. You had written orders from the candidates?

A. Yes.

Q. As to the expenditure of the funds?

A. Yes.

Q. In their behalf?

A. Yes.

Q. For the primary campaign?

A. For the primary campaign.

Q. Was all the money received by the Committee paid over to you as Treasurer?

A. Yes.

Q. And did you disburse that money as Treasurer?

A. All but \$1199.15, which I turned over to the Treasurer succeeding me in the Fall campaign.

Q. Did you keep any books or other records of your receipts and disbursements as Treasurer?

[70] A. None other than the bank checks, the cancelled bank checks, and the statements from the bank, and receipts which I attached to my statement or accounting to the Court.

Q. Did you file an account of your receipts and disbursements?

A. I did.

Q. With the proper legal authorities?

A. Yes.

Q. I hand you a statement of receipts, expenditures or disbursements. Do you recognize your signature there?

A. I do.

Q. That was executed by you on the 11th day of October, 1939?

A. Yes, sir.

Q. With whom did you file that, do you recall?

A. The County Commissioners of Luzerne County.

Q. You are familiar with the fact that this statement shows that you received ten contributions or ten assessments or ten amounts from candidates or from certain named people, aggregating a total of \$5600?

A. I am.

Q. Were they all candidates for various offices in Luzerne County?

A. They were.

MR. MORRISON: If your Honor please, I would like [71] for the record that the reporter copy in the names and the amounts of these sums received by Mr. Callahan as Treasurer after I have offered this in evidence. I think it would be easier to follow it. It has attached a lot of vouchers which I don't think are material.

MR. WISER: If this goes in, it all ought to go in for what it is worth.

THE MEMBER: What is it?

MR. MORRISON: Under our election law, the committees, the political campaign committees must file a statement of all receipts and all disbursements, showing what happened to the funds that they received and the expenditures must be in accordance with those provisions of the Election Code.

THE MEMBER: You may offer it. I will admit it as Petitioner's Exhibit 2/. Call attention to the par-

ticular part you want stressed. It doesn't need to be put into the record.

THE CLERK: This has been admitted?

THE MEMBER: Yes.

(Document referred to marked Petitioner's Exhibit No. 2 (and received in evidence).)

THE MEMBER: Is it paged?

MR. MORRISON: Yes, it is paged.

I would like leave to withdraw that and substitute [72] a photostatic copy.

THE MEMBER: You may have that privilege.

Q. Mr. Callahan, what do these amounts represent under the caption "Receipts"?

A. The amounts of money received from the various candidates.

Q. Under "Expenditures" or "Disbursements" as it is captioned here, what do those amounts represent?

MR. WINER: I object, your Honor. I think the document speaks for itself.

THE MEMBER: I will let him answer it.

MR. MORRISON: It does—

THE MEMBER: He knows what they represent.

A. The amounts disbursed in the campaign.

Q. Were you or were you not authorized by the ten candidates who are listed on the first page authorized to make those disbursements on their behalf?

MR. WINER: I object.

THE MEMBER: Just a minute. Did you have the written authority from them?

A. Yes.

THE MEMBER: Do you have it here?

A. I don't have it here; no.

THE MEMBER: In effect, what did it provide?

A. It provided that I was to spend this money in the [73] payment of certain of those bills incurred in the primary campaign, such as advertisements, publicity on the radio. In some instances, poll men.

THE MEMBER: That was expenses incurred for the entire Democratic campaign or for the campaign for the entire list of Democratic candidates?

A. The entire list of candidates.

THE MEMBER: Not just each candidate?

A. No. Well, each item—each candidate gave me a written authority to spend the amount of money that he had given me.

THE MEMBER: I understand that he gave you authority to spend the money?

A. Yes.

THE MEMBER: So far as he was concerned; but he didn't furnish you a list of his own individual items of expense?

A. He did not.

THE MEMBER: For which to make the expenditures?

A. He did not.

MR. MORRISON: I just want to clear that up, your Honor.

Q. Mr. Callahan, the amounts that you paid out as Treasurer were amounts that were incurred by the—of expenses incurred by the Committee as such working for Judge [74] McDonald and the candidacy of the other gentlemen?

A. Yes.

MR. WINER: I object, your Honor. The question is very leading.

THE MEMBER: What is your objection?

MR. WINER: He is leading the witness right along.

MR. MORRISON: Because of the fact that his Honor saw fit to get the witness twisted up on this thing. He thought he was paying Judge McDonald's expenses out of his own pocket.

Q. Did the amounts you received from the 9 candidates other than Judge McDonald help his candidacy?

THE MEMBER: Wait a minute.

MR. WINER: I object.

THE MEMBER: Wait a minute. That is calling for an opinion.

Q. Was the money used for the mutual benefit of all the candidates?

MR. WINER: I object, your Honor.

THE MEMBER: You tell us what the money was used for, and we will draw the conclusions.

Q. Mr. Callahan, the moneys were expended by you as Treasurer of the Primary Campaign Committee solely for the—

THE MEMBER: Don't ask leading questions.

MR. MORRISON: Very well, your Honor.

[75] MEMBER: He knows what you are talking about.

Q. Mr. Callahan, were any of these gentlemen candidates for office in the primary election?

A. All of those gentlemen were.

Q. For various vacancies in office?

A. Yes.

Q. Other than the two Judgeships?

A. Yes.

Q. Judge McDonald and John H. Bonin—were they the candidates for the two Judgeships?

A. Yes.

Q. Were these moneys expended for their benefit?

THE MEMBER: Wait a minute. Wait a minute.

MR. WINER: I object, your Honor.

THE MEMBER: You can show what the moneys were expended for.

MR. MORRISON: I have done that.

THE MEMBER: We will draw the conclusions. So, don't be trying to invade that territory. That is ours.

Q. Mr. Callahan, these disbursements were made by you as Treasurer of the Campaign Committee for certain expenses incurred by your Committee in connection with the primary election, at which these ten candidates were up for election to office, for nomination to office?

A. Yes.

[76] MR. MORRISON: Cross-examine.

MR. WINER: No questions, your Honor, except that I would like to renew my objection to all of the testimony.

THE MEMBER: You may have an exception. I will overrule your objection and reserve the question of materiality of this testimony, this entire line of testimony.

MR. WINER: Thank you, your Honor.

THE MEMBER: That is all, Mr. Law.

(Witness excused.)

MR. MORRISON: Mr. Malinowski.

Whereupon JOHN MALINOWSKI was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MORRISON:

Q. Mr. Malinowski, what is your occupation?

A. I am president of the Miners National Bank of Nanticoke.

Q. Of where?

A. Nanticoke, Pennsylvania.

Q. Is that in Luzerne County?

A. That is right.

Q. Is that where you live?

[77] A. No. I live in Hanover Township.

Q. In Luzerne County?

A. That is right.

Q. What was your occupation in 1939?

A. President of the Miners National Bank of Nanticoke.

Q. Did you have any connection with the Democratic Organization in Luzerne County in 1939?

A. I did.

Q. Did you hold any office with that Committee?

A. I was the County Treasurer.

Q. You were County Treasurer of what?

A. Of the Luzerne County Democratic Committee.

Q. Were you elected or appointed by the Committee?

A. I was elected.

Q. How long had you been a member of that Democratic organization in Luzerne County?

MR. WINER: I object, your Honor; also on the same grounds as the prior witnesses.

THE MEMBER: Yes. Your objection will be overruled, with reservation as to materiality of the questions. You will be allowed an exception. It is under-

stood your objection runs to this entire line of testimony.

Q. Have you ever run for elective office in Luzerne County?

A. I have.

[78] Q. What was that?

A. I ran for the office of National Delegate to the Chicago Convention in 1932.

Q. Were you successful in that campaign?

A. I was elected as a Roosevelt candidate.

MR. WINER: I object.

Q. Did you vote for Mr. Roosevelt on the first ticket?

A. On the first ballot.

THE MEMBER: Strike that out.

Q. Were you thoroughly familiar, as Treasurer, with all the receipts and disbursements of your Committee?

A. I was.

Q. Did you receive as Treasurer the moneys from the various members of the Committee; that is, did the Committee's funds come into your hands as Treasurer?

A. They did.

Q. Did you as Treasurer disburse the moneys of your Committee?

A. I did.

Q. Did you keep any books or records of your receipts and disbursements as Treasurer of that Committee?

A. I had a daily slip of the receipts; check book, bank book and duplicate deposit books.

Q. Did you ever file with the lawful authorities of Pennsylvania a statement of receipts and disbursements?

[79] A. I did.

Q. You are required to do that by the Laws of the Commonwealth?

MR. WINER: I object, your Honor.

A. Yes.

Q. I show you here a statement. Do you recognize that as a statement of receipts and disbursements of your 1939 election campaign of the Democratic Party?

A. I do.

Q. Is that your signature there?

A. It is.

Q. This statement you filed with the proper authorities, did you not?

A. With the Bureau of Elections for Luzerne County.

Q. Bureau of Elections?

A. Yes.

Q. Mr. Malinowski, I want to show you this list of receipts and disbursements attached to your filed statement. It is quite large. Can you tell from that list who were the candidates in Luzerne County for the various vacancies that occurred at that election?

MR. WINER: I object. This instrument isn't in evidence as yet.

THE MEMBER: What is that?

MR. MORRISON: He has identified it.

[80] — MR. WINER: It isn't in evidence.

MR. MORRISON: That is right. I will offer it in evidence, if you want it now.

A. Yes, I could.

Q. Suppose you read off the names.

MR. WINER: Excuse me. You said that you would offer it.

MR. MORRISON: I will offer it as soon as he is through with it.

THE MEMBER: Does it show itself what the names are?

MR. MORRISON: It doesn't show the name of the office. It shows the names of the individuals.

THE MEMBER: What is it you want him to testify to?

MR. MORRISON: I want him to tell the names of people who are running for office whose names may appear on the list.

THE MEMBER: You want him to pick out the particular ones who were candidates?

MR. MORRISON: That is it.

A. Michael F. McDonald.

Q. Will you state how much you received from him?

THE MEMBER: That will show there, won't it?

MR. MORRISON: It will show; yes.

THE MEMBER: Just call the names. We can get it [81] from the record.

A. Michael F. McDonald, G. Lester Thomas, Joseph Bialogawicz, John H. Bonin, John A. Riley, Ralph Gitz, Edward F. McGovern, Stanley Leonard, Stanley B. Janowski, John Kridlo.

Q. Was Ralph Gitz a candidate for office?

A. He was.

Q. What do the amounts shown opposite their names represent?

MR. WINER: I object, your Honor. I think the instrument speaks for itself.

THE MEMBER: He may answer that. What do those amounts represent?

A. They were the political assessments of the individual candidates.

MR. WINER: I move that that be stricken out.

Q. Made by whom? That is, who made the assessments?

A. The sub-committee of the Luzerne County Democratic Committee.

THE MEMBER: Let's find out how. Get that straight.

Who determined how much should be paid in by these candidates?

A. A sub-committee was appointed by the County Chairman and they determined.

THE MEMBER: Did the candidate have anything to do [82] with fixing the amount that they demanded of him?

A. That I wouldn't know.

Q. Let me ask you this question: Were you a member of that sub-committee?

A. No, I was not.

Q. So that you don't know just how the sub-committee operates?

A. Not exactly; no.

MR. WINER: If your Honor please, I renew my objection and ask that the word "assessment" be stricken from the record.

THE MEMBER: I understand the sense in which it is used,—this witness used that term. I take it as descriptive rather than in its technical sense.

Q. Were you authorized by the ten candidates whom you have named to make disbursements on their behalf of the amounts that they paid over to your Committee?

A. Yes. That is the duty of the County Treasurer.

THE MEMBER: How were you authorized? In what way?

A. I was authorized in writing.

THE MEMBER: Have you the writing here?

A. No, I don't.

THE MEMBER: Why did you require authorizations?

A. It was always customary.

THE MEMBER: Did you have authorization from these [83] other subscribers, these other people who contributed to the fund?

A. That is right.

THE MEMBER: To pay out their contributions, also?

A. That is right.

THE MEMBER: Everybody who contributed gave you authority to pay out?

A. No. The candidates—

Q. Do you know, Mr. Malinowski, that the law requires you to get written authorization from each candidate to make disbursements?

A. Yes, I do.

MR. WINER: I object.

THE MEMBER: I overrule it. We are just cutting corners on this thing now.

Q. Do you know, Mr. Malinowski, whether these disbursements made by you are for the type of expenses permitted by the Election Code of Pennsylvania?

MR. WINER: I object, your Honor.

THE MEMBER: What is that? Read that to me.

(The question was read.)

MR. WINER: I will object, your Honor.

THE MEMBER: Objection sustained.

Q. Do you know, Mr. Malinowski, whether or not any objection was ever made to the filing of your account, or any [84] exception taken to it?

A. No, there was not.

MR. WINER: I object. I don't see how that is material.

MR. MORRISON: I think——

THE MEMBER: I overrule the objection.

MR. MORRISON: I offer in evidence the statement of John Malinowski, containing a list of receipts and disbursements by him as Treasurer of Luzerne County Democratic Committee for the election held November 7, 1939.

THE MEMBER: That was for the general election?

A. That is right.

THE MEMBER: Admitted as Petitioner's Exhibit 3.

(Document referred to marked Petitioner's Exhibit No. 3 and received in evidence.)

Q. As Treasurer of your Committee, Mr. Malinowski, you have received moneys for the Committee to spend in election campaigns. Do you recall how many campaigns you have acted as Treasurer?

A. In four; from 1936 down to 1940.

Q. Are you familiar with the election Code of Pennsylvania?

A. I am.

Q. As to what a Committee may disburse money for?

A. I am.

[85] Q. Are you satisfied in your own mind that you made proper disbursements?

MR. WINER: I object.

Q. (Continuing.) —for campaign expenses?

THE MEMBER: Objection sustained.

Q. Mr. Malinowski, it has been stipulated that in addition to the \$8000 paid over by Judge McDonald as set forth

in paragraph 13, he also expended out of his own funds, in addition to those payments, a total sum of \$5017.27. I would like you to look at paragraph 14 of the stipulation and look at the list of disbursements made there. (Showing stipulation to witness.)

A. It is quite ordinary.

MR. WINER: I object.

THE MEMBER: What was the question?

MR. MORRISON: I just told him to look at it.

THE MEMBER: There was no question put to you. Strike the answer.

Q. Mr. Malinowski, in your opinion, would you say that those disbursements constituted ordinary and necessary election expenses by Judge McDonald?

MR. WINER: I object, your Honor.

THE MEMBER: Objection sustained.

MR. MORRISON: Your Honor, the thing is this: Here is a man that has been Treasurer. He knows what campaign [86] expenses—what are needed and what are required and what are permitted under the law. He is testifying as to whether or not these are ordinary and necessary election campaign expenses.

THE MEMBER: The very thing the Board is called upon to decide.

MR. MORRISON: No, no. The Board is called upon to decide whether or not these disbursements are ordinary and necessary business expenses under the Revenue Act, not under the Election Code.

THE MEMBER: It is under the Revenue Act we are operating.

MR. MORRISON: What I am talking about are ordinary and necessary expenses in connection with Judge

McDonald seeking election to office as Judge to succeed himself.

THE MEMBER: I understand it. Objection sustained.

MR. MORRISON: If your Honor please, I propose to offer to prove by this witness that the disbursements made by Judge McDonald to the Primary Campaign Committee of the Democratic Party and to the County Campaign Committee at the general election, and the disbursements made by Judge McDonald for filing fees, printing and stationery, telephone, rental of radio, hire of clerks, postage paid the United States Post Office, rental of typewriter, advertising, travel expenses, were ordinary and necessary expenses incurred by [87] Judge McDonald in the election campaign of 1939 for Judge to succeed himself at January 1, 1940.

THE MEMBER: The offer is denied. You may have an exception.

MR. MORRISON: I will take the exception:

Q. Mr. Malinowski, you read over that stipulation dealing with the expenses by Judge McDonald. Would you say that other candidates for office would have expenses similar in nature?

A. I would.

MR. WINER: I object.

THE MEMBER: Just a moment.

MR. WINER: I object.

THE MEMBER: Objection sustained. It is immaterial.

MR. MORRISON: I may be repeating a question here. I thought I asked it. My colleagues seem to think I have not.

Q. Were the disbursements by you in the 1939 campaign, that is, as Treasurer of the Democratic County Committee, for the benefit of all those ten candidates?

A. They were.

MR. WINER: I object, your Honor.

THE MEMBER: That is the same question you asked before. I think I ruled it out. The answer may be stricken.

[88] MR. MORRISON: Your Honor, I want to have it noted on the record that you will grant me an exception.

THE MEMBER: You have an exception to all adverse rulings.

MR. MORRISON: You may cross-examine.

MR. WINER: No questions.

THE MEMBER: That is all, Mr. Malinowski.

(Witness excused.)

MR. MORRISON: Petitioner rests.

THE MEMBER: Petitioner rests.

MR. WINER: Respondent rests.

THE MEMBER: How much time do you want for briefs?

MR. MORRISON: Simultaneous briefs in 45 days?

THE MEMBER: 45 days simultaneous briefs; 15 days to reply.

THE CLERK: The first brief will be due November 2nd; November 17th for the reply briefs.

THE MEMBER: We will adjourn to 9:30 tomorrow morning.

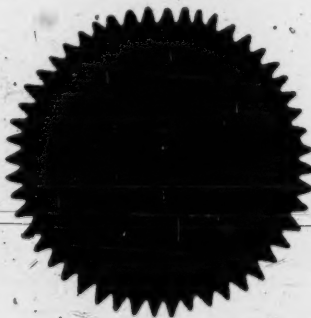
(Hearing concluded.)

COMMONWEALTH OF PENNSYLVANIA,
LUZERNE COUNTY, ss.

1904 of 19 36

J. Joseph Morris, REGISTER FOR THE PROBATE OF WILLS AND GRANTING LETTERS
OF ADMINISTRATION in and for the County of Luzerne, in the Commonwealth of Pennsylvania

Do hereby certify and make known that on the **6th** day of **December**
in the year of our Lord one thousand nine hundred and **thirty-six** **LETTERS TESTAMENTARY**
on the Estate of **Mary W. Stegmaler** deceased
were granted unto **George J. Stegmaler, George W. Oeschelberger and R. F. McDonald**
who having first been duly sworn to well and truly administer the goods and chattels, rights and credits
which were of said deceased according to law.



Given under my hand and seal of the Register's Office, at

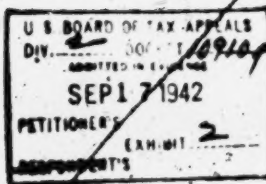
Wilkes-Barre, this **6th** day of **December**

A. D. one thousand nine hundred and **thirty-six**

Joseph Morris Register
Clara Wolfe Deputy

PETITIONER'S EXHIBIT 1

STATE OF PENNSYLVANIA)
COUNTY OF LUZERNE) SS:



I, Paul Pengelly, Election Clerk in the office of the County Commissioners of Luzerne County, on October 13, 1939, do hereby certify that the annexed account of Thomas J. Callahan, Treasurer of the Luzerne County Democratic Primary Campaign Committee for the Primary Election of September 12, 1939, was filed with me as said clerk on October 13, 1939, and that said account is the original account remaining on file as a public document in the Commissioner's Office of Luzerne County.

In witness whereof, I have hereunto set my hand this 16th day of September, 1942.

Paul Pengelly

STATE OF PENNSYLVANIA)
COUNTY OF LUZERNE) SS:

I, Stephen J. Tkach, Chief Clerk of the County Commissioners of Luzerne County in the State of Pennsylvania, having a seal, do hereby certify that Paul Pengelly by whom the foregoing certificate was made and whose name is subscribed thereto was on October 13, 1939, the Election Clerk in the Commissioner's Office of Luzerne County in charge of the filing of Primary and General Election accounts and that I am well acquainted with his handwriting and know that the signature on the foregoing certificate is his genuine signature.

In witness whereof, I have hereunto set my hand and affixed the official seal of the County Commissioners of Luzerne County this sixteenth day of September, 1942.

Stephen J. Tkach
Chief Clerk of the County Commissioners
of Luzerne County

207 This blank is to be used to cause the aggregate receipts or disbursements of a political committee, in connection with any nomination or election, shall exceed fifty dollars. For the office of United States Senator, Governor, Lieutenant Governor, Auditor General, Secretary of Internal Affairs, State Treasurer, and Judge of the Supreme or Superior Court, it must be filed, within thirty days after the Primary and within thirty days after the election, with the Secretary of the Commonwealth; and, for all other offices, with the County Board of Elections.

COMMONWEALTH OF PENNSYLVANIA

Treasurer of The Luzerne County

of committee and/or name of candidate for whom the committee and treasury is raised

(Indicate the Primary or Secondary and Date Reported)

DO CERTIFY, That the following is a full, true and detailed account of each and all of the receipts, expenditures, disbursements and unpaid debts and obligations of said committee and of every officer and other person acting under authority or on behalf of said committee or treasurer, in accordance with the requirements of the Pennsylvania Election Code.

DATE RECEIVED _____

FROM WHOM RECEIVED

ABSTRACT

1000 30

9.9.00

5230

450 00

350.00

250.00

\$07.00

500:00

500

500

EXPENDITURES OR DISBURSEMENTS

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT	
Sept. 1, 1939	Sunday Independent	Advertisement	252	00
Sept. 1, 1939	Marleton Broadcasting Serv., Inc.	Radio Service	187	20
Sept. 1, 1939	The Scrantonian	Advertisement	60	00
Sept. 1, 1939	Deemer and Company	One box paper	1	55
Sept. 1, 1939	The Lockhart Club	Advertisement	15	00
Sept. 1, 1939	James Sheridan	Salary	75	00
Sept. 2, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 2, 1939	Mary Ryan Bell	Salary	40	00
Sept. 2, 1939	Wilkes-Barre Record	Advertisement	21	00
Sept. 5, 1939	The Plain Speaker	Radio Advertisement	18	00
Sept. 6, 1939	Wilkes-Barre Record	Advertisement	152	88
Sept. 6, 1939	The Leader Publishing Company	Radio Advertisement	48	15
Sept. 8, 1939	Deemer and Company	Stationery Supplies	5	00
Sept. 8, 1939	Wilkes-Barre Record Company	Radio Advertisement	10	92
Sept. 8, 1939	Wilkes-Barre Record Company	Radio Advertisement	24	00
Sept. 7, 1939	Marleton Broadcasting Company	Radio Service	66	80
Sept. 7, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 7, 1939	Bratstvo Slovák News	Advertisement	62	00
Sept. 7, 1939	Wilkes-Barre Publishing Co.	Advertisement	166	80
Sept. 7, 1939	Wilkes-Barre Publishing Company	Advertisement	19	60
Sept. 7, 1939	F. J. Quinn Postmaster	Stamps	5	00
Sept. 7, 1939	The Scrantonian	Advertisement	60	00
Sept. 7, 1939	The Dallas Post	Advertisement	40	00
Sept. 8, 1939	Wilkes-Barre Record	Advertisement	12	00
Sept. 8, 1939	Times-Leader Publishing Co.	Advertisement	15	00
Sept. 8, 1939	Pittston Bulletin	Advertisement	70	00
Sept. 8, 1939	Nanticoke Telegram	Advertisement	15	00
Sept. 8, 1939	The Leader Publishing Co.	Radio Advertisement	19	60
Sept. 11, 1939	Wilkes-Barre Record	Advertisement	196	00
Sept. 11, 1939	Bell Telephone Company	Telephone Service	39	65
Sept. 11, 1939	The Pittston Gazette Company	Advertisement	65	00
Sept. 11, 1939	The Mountain Echo	Advertisement	50	00
Sept. 11, 1939	The Labor News	Advertisement	50	00
Sept. 11, 1939	Wilkes-Barre Publishing Company	Radio Advertisement	9	80
Sept. 11, 1939	Peter Daugert	Rental-Crystal Ballroom	10	00
Sept. 11, 1939	Stanton "B.A.I."	Radio Service	87	50
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Radio Advertisement	50	88

Petitioner's E

Sept. 1, 1939	James Sheridan	Advertisement	75	00
Sept. 2, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 2, 1939	Mary Ryan Bell	Salary	40	00
Sept. 2, 1939	Wilkes-Barre Record	Advertisement	21	00
Sept. 3, 1939	The Plain Speaker	Radio Advertisement	18	00
Sept. 6, 1939	Wilkes-Barre Record	Advertisement	152	88
Sept. 6, 1939	The Leader Publishing Company	Radio Advertisement	48	13
Sept. 6, 1939	Deemer and Company	Stationery Supplies	3	00
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	10	92
Sept. 6, 1939	Wilkes-Barre Record Company	Radio Advertisement	24	00
Sept. 7, 1939	Harleton Broadcasting Company	Radio Service	66	80
Sept. 7, 1939	Polish Weekly "Gornik"	Advertisement	75	00
Sept. 7, 1939	Bratstvo Slovak News	Advertisement	62	00
Sept. 7, 1939	Wilkes-Barre Publishing Co.	Advertisement	166	80
Sept. 7, 1939	Wilkes-Barre Publishing Company	Advertisement	19	80
Sept. 7, 1939	M. J. Quinn, Postmaster	Stamps	5	00
Sept. 7, 1939	The Scrantonian	Advertisement	60	00
Sept. 7, 1939	The Dallas Post	Advertisement	40	00
Sept. 8, 1939	Wilkes-Barre Record	Advertisement	12	00
Sept. 8, 1939	Times-Leader Publishing Co.	Advertisement	15	00
Sept. 8, 1939	Pittston Bulletin	Advertisement	70	00
Sept. 8, 1939	Nanticoke Telegram	Advertisement	15	00
Sept. 8, 1939	The Leader Publishing Co.	Radio Advertisement	19	80
Sept. 11, 1939	Wilkes-Barre Record	Advertisement	196	00
Sept. 11, 1939	Bell Telephone Company	Telephone Service	39	68
Sept. 11, 1939	The Pittston Gazette Company	Advertisement	65	00
Sept. 11, 1939	The Mountain Echo	Advertisement	30	00
Sept. 11, 1939	The Labor News	Advertisement	50	00
Sept. 11, 1939	Wilkes-Barre Publishing Company	Radio Advertisement	9	80
Sept. 11, 1939	Peter Dugert	Rental-Crystal Ballroom	10	00
Sept. 11, 1939	Station W. B. A. E.	Radio Service	87	50
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Radio Advertisement	50	98
Sept. 11, 1939	Wilkes-Barre Publishing Co.	Advertisement	190	44
Sept. 11, 1939	Congregation Bnai Israel	Advertisement	10	00
Sept. 14, 1939	Station W. B. A. E.	Radio time	150	00

STATEMENTS OF EXPENDITURES

DATE PAID	TO WHOM PAID	FOR WHAT	AMOUNT
Sept. 14, 1939	The Plain Speaker-Sentinel	Advertisement	2 00
Sept. 14, 1939	Wilkes-Barre Independent	Advertisement	2 00
Sept. 14, 1939	Polish Weekly "Gornik"	Advertisement	2 00
Sept. 14, 1939	Penna. Power & Light Company	Light	1 75
Sept. 14, 1939	Remington-Rand	Rental of Typewriter	2 00
Sept. 14, 1939	James Sheridan	Salary	25 00
Sept. 14, 1939	Mary Ryan Ball	Salary	25 00
Sept. 14, 1939	Receiver, Penna. Lib. Bank & Tr. Co.	Rental	25 00
Sept. 22, 1939	The Collins Press	Printing	252 25
Sept. 22, 1939	Michael Phillips	Rental of Hall	15 00
Sept. 14, 1939	James Sheridan	Payment of Poll-Tax	35 00
Sept. 8, 1939	John Dempsey	Entertainment	10 00
Sept. 14, 1939	Sterling Hotel	Lunches, Dinners, Room Rent	119 70
Sept. 22, 1939	Sterling Hotel	Lunches, Dinners, Room Rent	28 00
Sept. 11, 1939	Thomas J. Callahan	Personal and Traveling Expenses, gasoline, etc.	120 00
Sept. 11, 1939	James Sheridan	Personal and Traveling Expenses, gasoline, etc.	50 00
Sept. 11, 1939	Auto hire and poll-tax at \$5.00 each		200 00
Sept. 2, 1939	Polish Weekly "Gornik"	Rate	18 00

[illegible]

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1981

FRIDAY

Thomas C. Cullen Treasurer

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF LUTHERN.

Personally appeared before me, the above named _____,
who made oath that the foregoing statement, by him signed, is in all respects correct and true to the best
of his knowledge and belief.

Sworn to and subscribed before me,
this 11th day of October,

A. D. 1922-23

(SERIAL)

Notary Public.

My comm. exp. 5-8-11

Thomas Cullen

Petitioner's Exhibit. 2

U.S. BOARD OF
DY. 2
SEP 17 1942

STATE OF PENNSYLVANIA)
COUNTY OF LUZERNE) SS:

I, Paul Fencelly, Election Clerk in the office of the County Commissioners of Luzerne County on December 7, 1931, do hereby certify that the annexed account of John Lalinoski, Treasurer of the Luzerne Democratic Committee for the election on November 7, 1931, was filed by me as said clerk on Thursday, December 7, 1931, and that said account is the original account remaining on file as a public account in the Commissioner's office of Luzerne County.

In witness whereof, I have hereunto set my hand and seal this 16th day of September, 1942.

STATE OF PENNSYLVANIA)
COUNTY OF LUZERNE) SS:

I, Stephen W. Bach, Chief Clerk of the County Commissioners of Luzerne County in the State of Pennsylvania, do hereby certify that Paul Fencelly by whom the foregoing certificate was made and whose name is subscribed thereto was on December 7, 1931, the Election Clerk in the Commissioner's office of Luzerne County in charge of the filing of Primary and General Election accounts and was well acquainted with his signature and knew that the signature on the foregoing certificate is his genuine signature.

In witness whereof, I have hereunto set my hand and seal and the official seal of the County Commissioners of Luzerne County this sixteenth day of September, 1942.

Stephen W. Bach
Chief Clerk of the County Commissioners
of Luzerne County.

PETITIONER'S EXHIBIT 3

This blank is to be used to show the aggregate receipts or disbursements of a political committee, in connection with any nomination or election, shall exceed \$100.00. For the office of United States Senator, Governor, Lieutenant Governor, Auditor General, Secretary of Internal Affairs, State Treasurer, and Judge of the Supreme or Superior Court, it must be filed within thirty days after the Primary and within thirty days after the election, with the Secretary of the Commonwealth, and (c) all other offices, with the County Board of Elections. Every such account shall be accompanied by vouchers for all sums expended ten dollars in amount or over. It shall be unlawful for any candidate or treasurer of a political committee, or person acting as such treasurer, to disclose any money received from any anonymous source.

COMMONWEALTH OF PENNSYLVANIA

I, **John Malinowski** Treasurer of
LUZERNE COUNTY DEMOCRATIC COMMITTEE
 (Give title of committee and name of candidate for whom the committee and treasurer is acting)
ELECTION - NOVEMBER 7, 1939.
 (Indicate the Primary or Election date thereon)
 for the

DO CERTIFY, That the following is a full, true and detailed account of each and all of the receipts, expenditures, disbursements and unpaid debts and obligations of said committee and of every officer and other person acting under authority or on behalf of said committee or treasurer, in accordance with the requirements of the Pennsylvania Election Code.

RECEIPTS

DATE RECEIVED

FROM WHOM RECEIVED

AMOUNT

SUMMARY.

Balance on Hand - November 28, 1938	\$2,813.81
Bell Telephone Company of Pa. (Refund on Phone Deposit)	14.00
Political Contributions Received	37,567.06
TOTAL RECEIPTS	\$40,414.87

RECEIPTS.

FROM WHOM RECEIVED

AMOUNT

DATE RECEIVED

11-29-36

12-10-36

Cell Telephone Co. of N. Y. (on Telephone Deposit)

Balance on Hand

\$2,613.81

John Costello

14.00

T. U. Rolando

59.00

Beatie Kaler

25.00

Agnes Sharpe

15.00

Earl Hundinger

10.00

Robert Tierly

10.00

Thomas Jones

10.41

Irwin G. Davis

5.00

James Dougherty

8.00

James P. Kelghron

10.00

Harry Schaub

2.00

12-27-36

Wilbur Kearney

50.00

F. M. Margie

2.00

1-10-37

Edward Strzalka

100.00

John Hefferman

50.00

Agnes Sharpe

50.00

T. M. Wolfe

10.00

2-10-37

Wilbur Kearney

10.00

Joseph O'Hara

3.00

Edward MacLennan

25.00

2-21-37

F. J. Connolly

10.00

Agnes Sharpe

2.00

Wilbur Kearney

10.00

3-10-37

Harry Schaub

2.00

Joseph Rekus

25.00

F. J. Connolly

45.00

4-19-37

Wilbur Kearney

2.00

F. M. Margie

2.00

10-17-37

Michael F. L. Leland

100.00

W. Lester Thomas

2.00

10-11-37

Joseph Bialoskwicki

10.00

Wilbur Kearney

2.00

Agnes Sharpe

2.00

10-1-37

William L. Reider

2.00

F. M. Margie

2.00

10-20-37

John H. Bonin

7.00

10-23-37

John A. Riley

2.00

10-25-37

Ralph Gitz

100.00

10-26-37

Edward P. McGovern

80.00

Joseph Walsh

50.00

Edward Maledonia

40.00

Benjamin Stark

50.00

Michael Lyons

40.00

T. J. Wadzinski

175.00

Sylvester Grablick

2.00

Louis Brominski

50.00

Charles Frohaska

40.00

Joseph Gills

25.00

F. N. Johnson

25.00

Stanley Hoffman

25.00

John Karulowicz

25.00

Edmund Miklewski

50.00

10-28-37

Michael V. McDonald

2,000.00

John H. Bonin

2,000.00

10-30-37

Stanley Leonard

1,800.00

Thomas J. Callahan, Treas.

2,100.00

Stanley B. Janowski

2,000.00

10-31-37

John Kridlo

1,000.00

A. W. Miffins

25.00

Edward J. Quinn

25.00

	James Dougherty	15.00
	James F. Keighron	7.00
12-17-38	Harry Schaub	90.00
	Wilbur Kearney	14.00
1-18-39	P. M. Margie	100.00
	Edward Strzalka	30.00
	John Heffernan	54.00
	Agnes Sharpe	14.00
1-30-39	P. M. Wolfe	10.00
	Wilbur Kearney	10.00
	Joseph O'Hara	30.00
	Edward MacIlwain	35.00
3-21-39	P. J. Connolly	15.00
	Agnes Sharpe	5.00
	Wilbur Kearney	10.00
5- 8-39	Harry Schaub	12.00
	Joseph Rekus	15.00
	P. J. Connolly	45.00
6-19-39	Wilbur Kearney	7.00
	P. M. Margie	100.00
10- 7-39	Michael F. McDonald	3,000.00
	Walter Thomas	100.00
10-11-39	Joseph Biologawicz	10.00
	Wilbur Kearney	10.00
	Agnes Sharpe	10.00
	Edward Strzalka	10.00
10-20-39	P. M. Reiler	10.00
10-23-39	John H. Bonin	10.00
10-25-39	John A. Riley	100.00
10-26-39	Ralph Gitz	1,000.00
	Edward F. McGovern	100.00
	Joseph Walsh	50.00
	Edward Kaledonia	40.00
	Benjamin Stark	50.00
	Michael Lyons	40.00
	T. J. Wadzinski	100.00
	Sylvester Grablick	50.00
	Louis Brominski	50.00
	Charles Prohaska	40.00
	Joseph Gills	25.00
	E. M. Johnson	20.00
	Stanley Hoffman	10.00
	John Karailowicz	50.00
10-28-39	Edmund Miklewski	50.00
	Michael F. McDonald	3,000.00
10-30-39	John H. Bonin	5,000.00
	Stanley Leonard	1,800.00
	Thomas J. Callahan, Treas.	1,189.15
	Stanley B. Janowski	1,000.00
10-31-39	John Kridle	1,000.00
	A. M. Miffle	10.00
	Edward J. Quinn	10.00
	William J. Gatter	10.00
11- 1-39	Frank Cummings	60.00
	Anne Manger	25.00
	Mary O'Haire	25.00
11- 2-39	M. J. Topilinski	50.00
	Peter Swandke	50.00
	T. J. Mangan	100.00

Petitioner's Exhibit 3.

TOTAL RECEIVED FROM

\$2,585.85

RECEIPTS

DATE RECEIVED	FROM WHOM RECEIVED	AMOUNT
11- 2-39		
11- 2-39	John W. Murphy	80.00
	Kathleen Kelly	100.00
	O. Harold Wagner	50.00
	Michael Ruddy	50.00
11- 4-39	Lloyd E. Ellsworth	25.00
	Stanley B. Janowski	1,000.00
	Renee Thomas	100.00
	Sydelle B. Hyman	30.00
	Warren W. Williams	40.00
	J. W. Morris	25.00
	John F. Moore	25.00
	D. C. Wynnage	50.00
11- 6-39	Frank J. Schmitt	100.00
	John T. Wallball	35.00
	Michael O'Malley	50.00
	Charles Reilly	25.00
	SUB-TOTAL AMOUNT FORWARDED	\$24,099.87
	TOTAL RECEIPTS	\$40,414.87

EXPENDITURES OR DISBURSEMENTS.

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
12-15-38	Lake Flower Shop	Political Meeting	\$20.00
12-17-38	Penna. Power & Light Company	Office Maintenance	13.22
	Mary Ryan Bell	Clerical Services	125.00
	Eileen Piansovich	"	90.00
12-27-38	Glen Summit Spring Water Co.	Office Maintenance	8.50
12-31-38	Bell Telephone Company of Pa.	Telephone Service	54.58
	Penna. Secretary of Banking	Office Rental	43.00
2-17-39	Bell Telephone Company of Pa.	Telephone Service	52.38
	Penna. Power & Light Company	Office Maintenance	8.41
	Bennan the Florist	Political Meeting	15.00
	Penna. Secretary of Banking	Office Rental	100.00
3-18-39	Penna. Power & Light Company	Office Maintenance	.97
	Bell Telephone Company of Pa.	Telephone Service	32.50
	Penna. Secretary of Banking	Office Rental	50.00
3-23-39	John H. Bigelow & E. F. McGovern	Legal Services	1,500.00
5-8-39	Penna. Secretary of Banking	Office Rental	100.00
	Bell Telephone Company of Penna.	Telephone Service	47.84
7-24-39	Bell Telephone Company of Penna.	"	54.10
	Penna. Power & Light Company	Office Maintenance	3.52
8-1-39	Penna. Secretary of Banking	Office Rental	100.00
	Democratic State Committee	Political Contribution	300.00
	Bell Telephone Company of Penna.	Telephone Service	17.45
10-14-39	Luzerne County News Company	Office Maintenance	3.96
	Bennan the Florist	Political Meeting	5.00
	The Sterling Hotel	"	102.00
	Glen Summit Spring Water Co.	Office Maintenance	16.90
	Deemer & Company	Office Stationery	11.70
	The Collins Press	Printing	31.50
	Penna. Secretary of Banking	Office Rental	30.00
	James P. Sheridan	Clerical Services	150.00
10-25-39	Kupstas - McCormack - Williams	Advertising	1,613.00
	Remington Rand Inc.	Typewriter Rental	2.75
	Penna. Power & Light Company	Office Maintenance	5.90
	Bell Telephone Company of Penna.	Telephone Service	91.02
	Charles H. Dietrick	Printing	60.00
	Philip F. Fieseler	Advertising	10.00
	Italian Citizen's Club	"	30.00
	William A. O'Brien	"	250.00
	The Collins Press	Printing	969.50
	Wilkes-Barre Firemen Association	Advertising	25.00
	Rev. J. E. Gryczka	"	15.00
	Penna. Secretary of Banking	Office Rental	35.00
	Federation Newer Nationalities		
	Committee, Stephen Farris, Treas.	Political Contribution	3,500.00
10-26-39	Kupstas - McCormack - Williams	Advertising	2,500.00
10-31-39	Dorothy Kennedy	Clerical Services	75.00
	Elva McCarty	"	75.00
	Mary Ryan Bell	"	125.00
	James P. Sheridan	"	150.00
	Kupstas - McCormack - Williams	Advertising	1,500.00
11-2-39	Kupstas - McCormack - Williams	"	950.00
	Frank Corvale, Treas.	Election Expenses 1 - Dist	3,500.00
	Frank Donnelly, Treas.	" 2 - "	3,500.00
	John R. Owens, Treas.	" 3 - "	3,500.00
	John Bednar, Treas.	" 4 - "	3,000.00
	Stanley Reppy, Treas.	" 5 - "	3,000.00
	Thomas J. Callahan, Treas.	" 6 - "	3,500.00
	John Coulon, Jr., Treas.	" 7 - "	3,500.00
	M. E. Moore & Son	Political Rally	100.00
	Albert Brandau	"	50.00
	Joseph Dowling	"	30.00
	A. L. Dailey	"	"

	Bauman the Florist	Political Meeting	10.00
3-18-39	Penna. Secretary of Banking	Office Rental	100.00
	Penna. Power & Light Company	Office Maintenance	.97
	Bell Telephone Company of Pa.	Telephone Service	32.50
3-23-39	Penna. Secretary of Banking	Office Rental	50.00
5- 8-39	John H. Bigelow & E. F. McGovern	Legal Services	1,500.00
	Penna. Secretary of Banking	Office Rental	100.00
7-26-39	Bell Telephone Company of Penna.	Telephone Service	47.64
	Bell Telephone Company of Penna.	" "	54.10
	Penna. Power & Light Company	Office Maintenance	3.52
8- 1-39	Penna. Secretary of Banking	Office Rental	100.00
	Democratic State Committee	Political Contribution	300.00
10-14-39	Bell Telephone Company of Penna.	Telephone Service	17.45
	Luzerne County News Company	Office Maintenance	3.96
	Bauman the Florist	Political Meeting	5.00
	The Sterling Hotel	" "	102.00
	Glen Summit Spring Water Co.	Office Maintenance	16.90
	Deemer & Company	Office Stationery	11.70
	The Collins Press	Printing	31.50
	Penna. Secretary of Banking	Office Rental	30.00
10-25-39	James P. Sheridan	Clerical Services	150.00
	Kupstas - McCormack - Williams	Advertising	1,613.00
	Remington Rand, Inc.	Typewriter Rental	2.75
	Penna. Power & Light Company	Office Maintenance	5.90
	Bell Telephone Company of Penna.	Telephone Service	91.02
	Charles H. Dietrick	Printing	60.00
	Philip F. Fissler	Advertising	10.00
	Italian Citizen's Club	" "	20.00
	William A. O'Brien	" "	250.00
	The Collins Press	Printing	969.50
	Wilkes-Barre Firemen Association	Advertising	25.00
	Rev. J. E. Gryczka	" "	18.00
	Penna. Secretary of Banking	Office Rental	35.00
	Federation Newer Nationalities		
10-26-39	Committee, Stephen Farris, Treas.	Political Contribution	3,000.00
10-31-39	Kupstas - McCormack - Williams	Advertising	2,500.00
	Dorothy Kennedy	Clerical Services	75.00
	Elva McGarty	" "	75.00
	Mary Ryan Bell	" "	125.00
	James P. Sheridan	" "	150.00
11- 2-39	Kupstas - McCormack - Williams	Advertising	1,500.00
	Kupstas - McCormack - Williams	" "	950.00
	Frank Correalo, Treas.	Election Expenses 1 - Dist	3,500.00
	Frank Donnelly, Treas.	" " 2 - "	3,500.00
	John R. Owens, Treas.	" " 3 - "	3,500.00
	John Bednar, Treas.	" " 4 - "	3,000.00
	Stanley Reppy, Treas.	" " 5 - "	3,000.00
	Thomas J. Callahan, Treas.	" " 6 - "	3,500.00
	John Conlon, Jr., Treas.	" " 7 - "	3,500.00
	M. E. Moore & Son	Political Rally	100.00
	Albert Brandau	" "	50.00
	Joseph Dowling	" "	30.00
	A. L. Dailey	" "	15.00
11- 6-39	Polish Weekly Gornik	Advertising	206.00
	Roscoe Advertising Agency	" "	125.00
	The Press	" "	20.00
	Bauman the Florist	Political Rally	10.00
	Remington Rand Inc.	Typewriter Rental	18.00
	Deemer & Company	Office Stationery	44.06
	Kantrowitz	Office Maintenance	10.00
		SUB-TOTAL	\$38,695.58

EXPENDITURES OR DISBURSEMENTS

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
11- 6-39	Glen Summit Springs Water Co.	SUB-TOTAL FORWARD	\$38,695.58
	Penna. Secretary of Banking	Office Maintenance	6.50
	Hazleton Broadcasting Service	Office Rental	65.00
	Radio Station W B & X	Radio Rental	309.15
	Radio Station W B & X	" "	833.00
	Radio Station W B & X	" "	385.00
		TOTAL DISBURSEMENTS	\$40,294.23

EXPENDITURES OR DISBURSEMENTS

DATE PAID

TO WHOM PAID

PURPOSE

AMOUNT

UNPAID DEBTS AND OBLIGATIONS

DATE INCURRED	TO WHOM DUE	PURPOSE	AMOUNT
10-30-39	Cino J. Paul	Political Rally (Band)	\$85.00
11- 1-39	Charles H. Dietrick	Printing	30.00
11- 3-39	The Scranton Times	Advertising	84.00
11- 6-39	The Collins Press	Printing	1,939.14

November 10, 1939

TOTAL UNPAID DEBTS AND OBLIGATIONS.

\$2,078.14

John Malinowski Treasurer

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LUZERNE

Personally appeared before me, the above named John Malinowski, Treasurer who made oath that the foregoing statement, as to the signed, is in all respects correct and true to the best of his knowledge and belief.

Sworn to and subscribed before me,

this 10 day of,

A. D. 1939

John Malinowski

READY

Petitioner's Exhibit 3

Corporation filed
FORM 1040
 Treasury Department
 Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME TAX RETURN 1939

FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,
 DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
 OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

(Auditor's Stamp)

SEP 17 1940

or fiscal year beginning 1938, and ended 1940

To be filed with the Collector of Internal Revenue for your district on or before the 15th day of the first month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

Michael F. McDonald

3 Brown Street

Ashley

Lusarne

Penna.

200879

(Collector's Stamp)

23450

INCOME		
1. Salaries and other compensation for personal services. (From Schedule A)	\$ 20,000	00
2. Dividends	1,791	25
3. Interest on bank deposits, notes, mortgages, etc.	7	01
4. Interest on corporation bonds		
5. Taxable interest on Government obligations, etc. (From Schedule B)		
6. Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (Attach name and address)	27	13
7. Income from laboratories. (Attach name and address)		
8. Rents and royalties. (From Schedule C)		
9. Income (or loss) from business or profession. (From Schedule D)	(8,171)	18
10. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule F)		
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)		
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)		
11. Other income (including income from annuities) (Show name Directors Penna)	22	00
12. Total income in items 1 to 11. (Show deductible losses in Schedule D)	\$ 18,645	15
DEDUCTIONS		
13. Contributions paid. (Attach to Schedule H)	\$ 1,025	12
14. Interest. (Attach to Schedule H)	1,810	32
15. Taxes. (Attach to Schedule H)	545	18
16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Attach to Schedule H)		
17. Bad debts. (Attach to Schedule H)		
18. Other deductions authorized by law. (Attach to Schedule H)		
19. Total deductions in items 13 to 18	3,381	59
20. Net income (from 12 minus item 19)	\$ 15,265	54

COMPUTATION OF TAX			
21. Net income (from 20 above)	\$ 15,265	54	
22. Less: Personal exemption. (From Schedule J-1)	\$ 2,500	00	
23. Credit for dependents. (From Schedule J-2)	2,500	00	
24. Balance (after net income)	\$ 10,265	54	
25. Less: Income on Government obligations, etc. (See Instructions H)			
26. Earned income credit. (From Schedule E-1 or E-2)	1,400	00	
27. Balance subject to normal tax	\$ 8,865	54	
28. Normal tax (4% of item 27)	\$ 475	54	
29. Surtax on item 24. (See Instructions H)	542	08	
30. Total (from 28 plus item 29)			
31. Total tax (from 30, or if you find a net long-term capital gain or loss, enter line 16, Schedule F)			
32. Less: Income tax paid at source			
33. Income tax credit			
34. Balance of tax (from 31 minus item 32 and 33)	\$ 1,018	08	

NOTE—One form marked "DUPLICATE COPY" must be filed with this original return (25 will be returned if duplicate copy is not filed)

Schedule A—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of business	2. Amount	3. Expenses (deduct)	4. Amount
Executor Estate Mary S. Stagnaler	\$ 20,000 00		
Total of column 2 minus total of column 3 (enter on item 1, page 1)			

Schedule B—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C)

1. Obligations or securities	2. Amount received or paid at end of year including year proportionate share of such obligation held by estate, trust, person, date, or common trust fund	3. Interest received or earned during the year	4. Interest exempt from taxation	5. Interest on account to estate of decedent
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions			AS	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			AS	
(c) Obligations of United States issued on or before September 1, 1917			AS	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			AS	
(e) United States Savings Bonds and Treasury Bonds				
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (f) above)			NS	
Total (enter on item 3, page 1)				

Schedule C—INCOME FROM RENTS AND ROYALTIES. (See Instruction G)

1. Kind of property	2. Amount	3. Depreciation (applies to Schedule D)	4. Repair (applies below)	5. Other expenses (deduct below)	6. Net profit (column 2 minus total of columns 3, 4, and 5 (enter on item 6, page 1))

Explanation of deductions
shown in columns 4 and 5

Schedule D—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction G)

1. Total receipts (State nature of business or profession)		2. COST OF GOODS SOLD		3. Labor		4. Material and supplies		5. Merchandise bought for sale		6. Other costs (deduct below)		7. Net inventory at beginning of year		8. Total (line 2 in G)		9. Net inventory at end of year		10. Net cost of goods sold (line 7 minus line 9)		11. Total (line 8 plus line 10)		12. Net profit (or loss) (line 11 minus line 10) (enter on item 6, page 1)	
Judge & Attorney																							
11,500 12																							
10. Salaries not included as "Labor" (do not deduct compensation for yourself)																							
11. Interest on business indebtedness																							
12. Taxes on business and business property																							
13. Reproduction expenses																							
14. Bad debts arising from sales or services																							
15. Depreciation, obsolescence, and depletion (applies to Schedule E)																							
16. Rent, repairs, and other expenses (deduct below or on separate sheet)																							
1,563 22																							
17. Total (line 10 to 16)																							
14,573 22																							
18. Total deductions (line 9 plus line 17)																							
19. Net profit (or loss) (line 11 minus line 18) (enter on item 6, page 1)																							
1,927 12																							

If the production, transportation, purchase and sale of merchandise is an important part of the business, inventories are required. Enter "C," "I," or "M," on line 8 and 9 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions
shown in lines 9, 13, and 16

Schedule E—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property or building, date placed in service	2. Date acquired	3. Cost or other basis	4. Amount fully depreciated by year	5. Depreciation claimed for prior years	6. Remaining cost or other basis to be depreciated	7. Method of depreciation used	8. Estimated useful life in years	9. Depreciation for year	10. Total depreciation

CONTRIBUTIONS

SCHEDULE H.

St. Leo's Roman Catholic Church, Ashley	\$215.00
St. Leo's Sisters, Ashley	45.00
Community Welfare Federation	150.00
Wilkes-Barre City Hospital	52.50
Other hospitals, Wilkes-Barre	10.00
Malvern, Philadelphia	90.00
Other Catholic Churches	175.00
St. Stanislaus Orphanage	71.08
Soldiers' organizations	19.75
Christmas Basket	15.57
St. Casimer's Church, Plymouth	25.00
Jewish Church	5.00
Protestant Church	7.50
W. M. C. A.	5.00
Policeman's & Fireman's Fund	7.00
Other Charities	117.00
Catholic Hour	5.00

\$1,008.12

TAXES

Personal Property Tax	54.25
Personal Taxes	158.51
Gasoline Tax	60.00
Movie Tax	5.20
Liquor Tax	60.00
Tobacco Tax	14.60
Shows' Tax	5.00

346.14

SCHEDULE D. - ITEM 16.

Rent	\$ 800.00
Telephone & Tolls	166.87
Other Office Expenses, Water & Light, Etc.	112.41
Dees	50.58
Depreciation Books & Furniture	241.00
Depreciation on Auto	212.70
Books & Pamphlets	35.00
Gasoline & Oil	196.07
Parking	36.56

1,655.98

25

Respondent's Exhibit A

FINDINGS OF FACT AND OPINION.

DOCKET No. 109104. Promulgated March 10, 1943.

Petitioner was appointed judge to fill an unexpired term. At the ensuing primary and general elections he ran for election to a full term. He expended certain amounts in his own behalf and he also contributed funds to a political committee. The other candidates also contributed the amounts specified by the committee. *Held*, petitioner is not entitled to a deduction under section 23 (a) (1) (A) or (a) (2), as amended, or section 23 (e) (2) of the Internal Revenue Code.

Frederick E. S. Morrison, Esq., and John W. Bodine, Esq., for the petitioner.

Myron W. Winer, Esq., for the respondent.

The Commissioner determined a deficiency of \$2,506.77 for the taxable year ended December 31, 1939. The sole adjustment contested by petitioner is the disallowance of a deduction of \$13,017.27 which petitioner expended as "re-election expenses."

FINDINGS OF FACT.

The petitioner is an individual residing at 6 Brown Street, Ashley, Pennsylvania. He filed his individual income tax return for the calendar year 1939 with the collector of internal revenue for the twelfth district of Pennsylvania. Petitioner kept his books on the cash receipts and disbursements basis, and his return for the taxable year 1939 was so prepared.

Petitioner is a lawyer, admitted to the bar of the State of Pennsylvania. He was appointed by the Governor of Pennsylvania to fill an unexpired term as a judge of the Court of Common Pleas for the Eleventh Judicial District of Pennsylvania, which district is co-extensive with Luzerne

County. The compensation paid to petitioner as judge was \$12,000 per year. At the time of his appointment, petitioner agreed to be a candidate for the full 10-year term beginning January 1, 1940. He was a candidate to succeed himself in both the primary and the general elections of 1939. He was defeated in the general election.

In order to get the support of the Democratic organization of Luzerne County, petitioner had to pay the amount "assessed" by the subcommittee of the Democratic Party. Each of the candidates gave the treasurer authority to spend his contribution. The expenditures from the fund were principally on behalf of all the candidates. In addition to such contributions made by petitioner in the amount of \$8,000, he expended on his own behalf \$5,017.27 for advertising, traveling, and other expenses in connection with his campaign. He received a contribution of \$500 from his son for the purpose of defraying part of his campaign expenditures.

All facts stipulated but not expressly found herein are incorporated by reference.

OPINION

HILL, Judge: The sole issue of this proceeding is whether or not petitioner is entitled to a deduction for his "re-election expenses," either as a business expense, as a loss suffered in a transaction entered into for profit, or as a nontrade or nonbusiness expense.

The Commissioner denied the deduction claimed in petitioner's return as a business expense on the ground that it was not an ordinary and necessary expense of carrying on a trade or business. On brief, he contends that it is not deductible under any of the sections relied upon by petitioner.

Petitioner first contends that he was a judge and was running for re-election. Thus, he contends that he was carrying on a trade or business of being a judge and he should be allowed his "re-election expenses" as an expense of that

trade or business. He seeks to distinguish his case from *David A. Reed*, 13 B. T. A. 513; reversed on another issue, 34 Fed. (2d) 263, which in turn was reversed *sub nom. Lucas v. Reed*, 281 U. S. 699.

However, the mere fact that petitioner was already an office holder and was running for re-election in no wise distinguishes the instant case from the *Reed* case, *supra*. The expenses incurred had nothing whatever to do with the performance of petitioner's functions as a judge. "Running for office of and within itself is not a business carried on for the purpose of a livelihood or profit, but is only preparatory to the actual deriving of income from a subsequent holding of the office, if elected." *David A. Reed*, *supra*, 524. See *Charles H. McGlue*, 45 B. T. A. 761, 769. Petitioner is not entitled to a deduction by virtue of section 23 (a) (1) (A), Internal Revenue Code, as amended.

Petitioner's next contention is equally without merit. He did not suffer a loss in a transaction entered into for profit so that he would be entitled to a deduction under section 23 (e) (3). He spent the money to help win the election. If he had so won, he would have been a judge for a term of 10 years at the fixed annual salary. The salary was not paid to the judge for the winning of the election, but rather for the performance of the judicial functions of a judge. No profit could inure to petitioner merely from winning the election; therefore it was not a "transaction entered into for profit."

The last question to be decided is whether or not petitioner is entitled to a deduction for the amount of his campaign expenses as a nontrade or nonbusiness expenditure under section 23 (a) (2), *supra*, as amended by section 121 (a) of the Revenue Act of 1942. We say not.

Our holding that petitioner was not engaged in a trade or business would not deny him the benefit of a deduction for expenses "paid . . . for the production or collection of income or for the management, conservation or maintenance of property held for the production of income."

However, we have no doubt that it was not within the intentment of Congress to allow such expenses to be deducted under this section. See House Ways and Means Committee Report on Revenue Bill of 1942 at pages 74-76, and Senate Finance Committee Report at pages 87-88. Also of interest is the statement of Mr. Paul set forth at page 88 of volume 1 of the Hearings before the Ways and Means Committee. The expenditures upon which petitioner bases his claim for a deduction under this section are personal in nature. See *George W. Lindsay*, 34 B. T. A. 840. See also T. D. 5196, Internal Revenue Bulletin Dec. 14, 1942.

Furthermore, the concept that the holding not only of a high judicial office but of any public office constitutes a trade or business or a transaction entered into for profit is a contradiction of the basic ideology underlying the principles of our government. Equally under the ban of public conscience and, hence, of public policy is the contention that expenditures made to promote one's candidacy for election to public office represent expenses "paid . . . for the production or collection of income, or for the management, conservation or maintenance of property held for the production of income."

We hold that Congress did not intend that expenditures of the character here involved should be deductible.

Decision will be entered for respondent.

DECISION.

Pursuant to the determination of the Court, as set forth in its findings of fact and opinion promulgated March 10, 1943, it is

ORDERED AND DECREED: That there is a deficiency in income tax for the calendar year 1939 in the amount of \$2,506.77.

(Signed) JOHN W. KERN,
Judge.

**PETITION FOR REVIEW BEFORE THE CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.**

(Filed April 5, 1943.)

The petitioner, MICHAEL F. McDONALD, hereby petitions for a review by the Circuit Court of Appeals for the Third Circuit of the decision of the Tax Court of the United States in the above matter entered on March 10, 1943. The taxable period involved is the calendar year 1939. Petitioner's 1939 income tax return was filed by the petitioner in the Office of the Collector of Internal Revenue for the 12th Collection District of Pennsylvania, at Scranton, Pa.

FREDERICK E. S. MORRISON,
1429 Walnut Street,
Philadelphia, Pa.,

Counsel for Petitioner.

Dated: April 2, 1943.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

And afterwards, to wit, the 19th day of October, 1943, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones, Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof;

And afterwards, to wit, on the 9th day of December, 1943, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION TO REVIEW THE DECISION OF THE TAX COURT OF
THE UNITED STATES.

OPINION.

(Filed December 9, 1943.)

Before JONES, GOODRICH and McLAUGHLIN, *Circuit Judges*.

McLAUGHLIN, *Circuit Judge*:

The petitioner here seeks to deduct from his 1939 taxable income, the lawful expenses for his campaign for election to public office. During said campaign he was the incumbent of the particular position by reason of an ad interim appointment. The United States Court of Tax Appeals disallowed the deduction. The matter is here on petition for review of that decision.

On his behalf it is urged in the alternative: that such deduction is allowable as ordinary and necessary expenses incurred in his trade or business; or as a loss on a transaction entered into for profit; or as ordinary and necessary expenses incurred for the production or collection of income.

The expenses here were strictly in compliance with the state statute and legitimate in their entirety. The office

sought by the petitioner carried a ten year term. Such a period embraces a substantial picture of permanency. It might well represent the future availability of such aspirant for the particular position. We do not see that petitioner's age has been stated in the testimony but it does appear that in 1939 he had been practicing law thirty-five years. In any event, the objective of the expenditures was to obtain a considerable amount of money, over at least a decade of years. Under the decisions, an outlay of this sort is in the nature of a capital item. As such, it is not deductible under any of the arguments of the petitioner. This particular type of case is a matter of first impression in the Circuit Court of Appeals but the principle involved has been passed on in this Circuit in *Clark Thread Co. v. Commissioner*, 100 F. (2d) 257. There the petitioner had paid over a sum of money to a competitor, in consideration of the latter abstaining from the use of the name Clark on its products. The amount paid was set out as a deduction for the particular year. The Court held that it was a capital expenditure, with derived benefits enuring to the Clark Company over a period of many years. It said on page 258:

"The benefits derived from this right cannot be confined to the year in which it was acquired and therefore the cost of acquiring it cannot be charged against income earned in that year."

To much the same effect is another decision of this Circuit in *Newspaper Printing Co. v. Commissioner*, 56 F. (2d) 125.

The petitioner urges that his campaign expenses are deductible from gross income as coming within the language of Section 23, (a) (1) of the Internal Revenue Code reading: "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *." It is not disputed that this language as it is construed, (for example, *Higgins v. Commissioner*, 312 U. S., 212) means that the expenses must be directly connected with the carrying on of the taxpayer's business,

in order to be deductible. But the petitioner contends, that is just the situation, namely, that the campaign for election was part of the taxpayer's business. The public office, petitioner was holding by appointment, was that of county judge. In 1939 he was running for election to that position. His campaign expenses are the claimed deduction. These were all incurred prior to the election itself. They involved the usual type of such disbursements. None of them had the slightest relationship to the functioning of the judicial office. Two cases in the then Board of Tax Appeals are quite similar to the instant one. In the first, *Reed v. Commissioner*, 13 BTA, 513 (reversed on another issue, 34 F. (2d), 263 (CCA 3rd), reversed 281 U. S., 699) a candidate for the United States Senate, attempted to deduct his campaign expenses. The Board held; that running for office is not a business, carried on for the purpose of a livelihood but only preparation for the actual deriving of income from a subsequent holding of the office if elected. The petitioner attempts to distinguish that case from the one at bar. He says that the taxpayer in the *Reed* matter was not in the office at the time he campaigned for it; whereas the present petitioner was actually the incumbent. We do not see any important difference in the two sets of facts. Both candidates were running for offices whose terms commenced in the future. The expenses in each case had solely to do with the desired future period of the particular position.

The second Tax Appeals decision is *Linsay v. Commissioner*, 34 BTA, 840. There, a Congressman endeavored to deduct the expenses of trips to his home city. The trips were for the purpose of keeping in touch with his constituents. The deduction was refused, under the authority of the *Reed* case. The Board held that such an item was in the nature of campaign expense and unconnected with the functions of the office of Congressman. In that case there was a stipulation between the parties that maintenance of contacts with his constituents was necessary to Linsay's reelection.

The second of petitioner's alternative arguments is under Section 23 (e) (2) of the Internal Revenue Code. That allows as a deduction, by an individual, losses sustained during the taxable year "if incurred in any transaction entered into for profit, though not connected with the trade or business."

In *Dresser v. United States*, 55 F. (2d), 449 (C. Cls.) certiorari denied, 287 U. S., 635, the Court said at page 510:

"A loss in order to be deductible under the statute must be an unintentional parting with something of value."

•In *Guirlani & Bro. v. Commissioner*, 119 F. (2d)-852 (CCA 9th) at page 857 the opinion reads:

"We reiterate, the parting with the money by the taxpayer here was deliberate and intentional according to the testimony introduced by it."

And on the same page:

"Failure to realize a desired profit is not of itself a loss. If this taxpayer did not make the expenditure, there would be no loss, for all that would happen would be failure to show a desired profit."

Here, petitioner made his contribution of his own free will, in order to obtain the support of his political party in both the primary and general election campaign. He received such support. In addition, and more or less in connection therewith, his money paid for advertising, clerical assistance, transportation and other necessary campaign disbursements. Personally, politically and professionally, he had the benefit of the publicity. When he arranged for his party's backing he had no guarantee of election. Of necessity, he knew that he might be defeated. In reality, he made his party contribution in order that he might be its candidate, and facing the unescapable fact that he could lose out at the election. Fairly, he received what he paid for. Unhappily for him, it did not result in victory and, therefore, continuance in his position. Certainly, his money disbursements were not the involuntary parting with something of value contemplated by the statute as constituting a deductible loss.

Petitioner's last point is under Section 121 (a) of the Revenue Act of 1942 which added to Section 23 (a) of the Internal Revenue Code the following:

"(2) Non-Trade or Non-Business Expenses.—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

This amendment came about as the result of the decision of the United States Supreme Court in *Higgins v. Commissioner*, 312 U. S., 212. In that case a claimed deduction under Section 23 (a) (1), for the expense of managing the taxpayer's investments, was denied. The Court held that such management did not constitute a "trade or business." Since non-trade and non-business income was taxable, steps were taken to include in the Code an amendment allowing deduction of expense in connection therewith. The retroactive 1942 amendment followed. The regulation accompanying the amendment specifically excludes such a deduction as here asserted. That regulation in Section 19.23 (a)-15 (as added to by T.D. 5196 1942-2 Cum. Bull. 96).

(b)

"Among expenditures not allowable under 23(a)(2) are the following:

Campaign expenses of a candidate for public office."

Section 23 (a) (2) forthrightly corrected unfair situations of the Higgins type where taxes were being paid on non-business income with no deduction allowed for expenses in connection therewith. But that section has no application to the instant facts. Prior to that amendment, petitioner's salary, as a public official, was business income. From this, ordinary and necessary business expense was deductible. Had petitioner been elected in 1939, that same pattern would have continued.

The decision of the Tax Court is affirmed.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8361. October Term, 1943.

MICHAEL F. McDONALD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Present: JONES, GOODRICH and McLAUGHLIN, *Circuit Judges.*

Appeal from the Tax Court of the United States. This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court of the United States in this cause be, and the same is hereby affirmed.

By THE COURT,

GERALD McLAUGHLIN,

Circuit Judge.

December 9, 1943.

Endorsements—

Order Affirming Decision of the U. S. Tax Court

Received and Filed

December 9, 1943

William P. Rowland, Clerk.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*
THIRD JUDICIAL CIRCUIT, }

I, WILLIAM P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit; Do HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Appendix to Petitioner's Brief, as constituting the portions of the record before this court at argument; and proceedings in this court in the case of Michael F. M. Donald v. Commissioner of Internal Revenue, No. 8361, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 8th day of
(Seal) February in the year of our Lord one thousand nine hundred and forty-four, and of the Independence of the United States the one hundred and sixty-eighth.

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 10, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.